

1991

SOUTHERN UTAH WILDERNESS ALLIANCE, a Utah non-profit corporation; MICHAEL F. HEYREND as natural parent and general guardian of NATALIE HEYREND, a minor; ROBYN EVANS PETTY, natural parent and general guardian of GRAY EVANS PETTY, SHANNON EVANS PETTY, and MILES COTTAM PETTY, minors; and UTAH PROFESSIONAL ARCHAEOLOGICAL COUNCIL, Petitioners, •8 . BOARD OF STATE LANDS AND FORESTRY OF THE STATE OF UTAH, DIVISION OF STATE LANDS AND FORESTRY, THOMAS E. JOHNSON and

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SHELTON K. JOHNSON, Respondents. : Brief of Appellant

Utah Supreme Court

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SOUTHERN UTAH WILDERNESS :
ALLIANCE, a Utah non-profit :
corporation; MICHAEL F. :
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and general guardian of :
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SHANNON EVANS PETTY, and :
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and UTAH PROFESSIONAL : Case No. 910129
ARCHAEOLOGICAL COUNCIL, :

Petitioners, :

vs. :

BOARD OF STATE LANDS AND :
FORESTRY OF THE STATE OF UTAH, :
DIVISION OF STATE LANDS AND :
FORESTRY, THOMAS E. JOHNSON :
and SHELTON K. JOHNSON, :

Respondents. :

BRIEF OF STATE RESPONDENTS ON JURISDICTION ISSUE
ON PETITION FOR REVIEW

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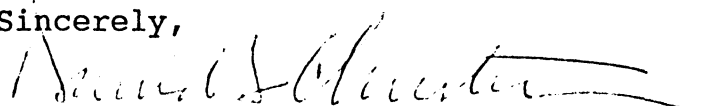
RE: Utah Supreme Court Petition for Review, Case No. 910129

Dear Counsel:

Delivered today are replacement copies of the brief of the State Respondents on the jurisdiction issue. Although the brief was filed July 29, 1991, the court clerk's office informed us that some separate identification of the statement of facts was normally required. We have changed the heading of the Statement of Case section on page 2 and in the table of contents to read "Statement of Case and Facts". We also corrected the outline of argument in the table of contents to more closely follow the brief headings in section I. C. and corrected a typographical error and page reference in the table of contents.

Please replace these briefs for the ones previously hand delivered. I apologize for any inconvenience this may cause.

Sincerely,


David S. Christensen
Assistant Attorney General

cc: Geoffrey K. Butler

IN THE SUPREME COURT OF THE STATE OF UTAH

SOUTHERN UTAH WILDERNESS :
ALLIANCE, a Utah non-profit :
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HEYREND as natural parent :
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STATEMENT OF JURISDICTION AND NATURE OF PROCEEDINGS BELOW

The Petitioners concurrently filed actions in this Court and in the Third District Court on identical grounds that challenge the sale of a parcel of state school trust land by the Division of State Lands and Forestry. The State Respondents by motion challenged the jurisdiction in this Court. On June 17, 1991, with additional clarification given on June 20, 1991, the Court granted the State Respondent's motion to suspend the rules to provide for expedited review of this jurisdictional issue.

STATEMENT OF ISSUE FOR REVIEW

The jurisdictional issue before the Court is:

1. Whether the Supreme Court or the District Court has jurisdiction to review the agency action of the Division of State Lands and Forestry, a sale of state lands, under the jurisdiction statutes, Utah Code Ann. § 78-2-2 (3)(e)(iii), § 78-2-2(3)(f) and § 78-3-4(5), and under the Utah Administrative Procedures Act, Chapter 46b, Title 63, incorporated by the jurisdiction statutes.¹

STANDARD OF REVIEW

The resolution of this issue will require the construction of the Court's jurisdiction statutes and provisions of the Utah Administrative Procedures Act. Questions of statutory

¹ The State Respondents reserve all jurisdictional issues that may come before the District Court, and other jurisdiction issues that may come before this Court, except the subject matter jurisdiction issue set forth above.

construction are pure legal questions for the Court. Adkins v. Division of State Lands, 719 P.2d 524, 526 (Utah 1986).

This will require a review of the plain language of the statute, the legislative history, other statutory provisions that are referenced in the jurisdictional statute, and the public policy that underlies appellate review of agency adjudications on the record. Adkins at 526-528.

STATEMENT OF THE CASE AND FACTS

The State Respondents have filed a "Record on Review" in accordance with Rules 15 and 16 of the Utah Rules of Appellate Procedure. This record is simply all documents in the Division of State Lands and Forestry ("Division") files, including the "Record of Decision", which contains the Division's order, its findings and the facts before the Division. References below are to documents identified by page number in the Record on Review.

Certain facts are relevant to the jurisdictional issue. On September 19, 1989, the Division of State Lands and Forestry received an application to purchase 80 acres of state trust lands located in Grand County and described as the W 1/2 of the SE 1/4 of Section 16, Township 24 South, Range 25 East, Salt Lake Base and Meridian. (R10)

Under the rules for the sale of state trust lands, the Division notified the adjoining property owners and Lessees (R42), and gave notice and requested comments through the State's Resource Development Coordinating Committee (RDCC) to various

parties, including the Petitioners Southern Utah Wilderness Alliance (SUWA) and the Utah Professional Archeological Council (UPAC), and various state agencies (R38a-38i and R97-109). The Division evaluated the sale in light of the comments, a financial analysis and the planning status of the land, and obtained an appraisal (R13-37).

The Division prepared a document required by the Division's rules for sale of state lands known as a Record of Decision (ROD), that set forth the agency action, the factual background, the statutes and rules authorizing the agency action, the conclusions and action and the procedures to appeal the decision. The ROD was executed by the Director of the Division on November 30, 1990. (R1-39)

The ROD was not contested within the period provided for under the sales rules and the Division set a time and place for the public sale and proceeded to give notice of the sale (R42-51), to advertise the sale (R54-66), and to solicit interest of purchasers by direct mailings to interested parties including the Petitioner SUWA (R52. 53 and 87-96). On February 19, 1991, the day before the scheduled sale, the Petitioner SUWA delivered to the Division written objections to the sale asking that the sale be stopped.
(R112-1-114)

February 20, 1991, the sale was held by public auction as proscribed by rule at the Moab Office of the Division. The

records of attendance (R67-68) indicate that 20 persons attended the sale, including eight who submitted bids. The successful bidders were Respondents Thomas E. and Shelton K. Johnson of Moab. (R61-80)

February 25, 1991, a certificate of sale was executed by the purchasers and the Director of the Division of State Lands. (R83-86) On March 6, 1991, the Petitioners by letter petitioned the Board for review of the sale (R118). March 11, 1991, the Director notified the Petitioner that the request for Board review was not filed within the time proscribed by the rule. (R120, 121)

On March 22, 1991, the Petitioners filed their Petition for Review with the Utah Supreme Court and filed a complaint in the Third District Court for Salt Lake County.

SUMMARY OF ARGUMENT

This Court lacks subject matter jurisdiction because the challenged agency action was not a "final order or decree in a formal adjudicative proceeding" and because there was no proceeding whatsoever of the Board of State Lands and Forestry, as required by provisions of Utah Code Ann. § 78-2-2 (3)(e)(iii)(1987 and Supp. 1991)(emphasis added).

The Division action which Petitioners seek to have judicially reviewed, both in this Court and the Third District Court (a sale of state land), was an "informal adjudicative proceeding" of the Division under the Utah Administrative

Procedures Act (UAPA), as designated by rule and in fact. Actions for review of informal adjudications are filed in the District Court. Utah Code Ann. § 78-2-2 (3)(f)(1987 and Supp. 1991).

This interpretation of the Court's jurisdiction statute is apparent from the clear language of the statute, its legislative history, the UAPA and public policy.

ARGUMENT

I. THE SUPREME COURT LACKS JURISDICTION FOR JUDICIAL REVIEW OF THE INFORMAL ADJUDICATIVE PROCEEDING OF THE DIVISION OF STATE LANDS AND FORESTRY.

A. Judicial Jurisdiction Is Governed By Statute.

Under the Utah Constitution, Article VIII, Sections 3 and 5, the jurisdiction of the Utah Courts is set by statute. City of Monticello v. Christensen, 788 P.2d 513, 518 (Utah 1990) ("legislature's prerogative to define a court's appellate jurisdiction"), citing State v. Taylor, 664 P. 2d 439, 441 (Utah 1983). Debry v. the Salt Lake County Board of Appeals, 764 P.2d 627, 628 (Utah App. 1988), citing Department of Human Services v. Manfre, 693 P.2d 1273, 1275 (N.M. App.1984)(jurisdictional statute did not expressly specify right of direct appeal to appeals court from administrative agency). State v. Humphrey, 794 P.2d 496, 497 (Utah App. 1990)(appellate jurisdiction of district court is only over informal agency adjudicative proceedings).

In Debry, the Court of Appeals dismissed an appeal of an order of an administrative agency for lack of jurisdiction because the jurisdictional statute did not expressly authorize a right of review. As explained by this Court, the jurisdictional statute is "not a catchall provision authorizing us to review the orders of every administrative agency for which there is no statute specifically creating a right to judicial review. In the absence of such a specific statute, we have no jurisdiction". Debry, 794 P.2d at 628 (emphasis added).

The statutory grants of jurisdiction demand strict compliance. Trojan v. Board of Regents, 104 Wis. 2d 277, 284, 311 N.W. 2d 586, 589 (1981)(strict compliance with procedural statutes necessary to review agency decisions). This is "particularly true when procedural rules affect the court's jurisdiction or competency to act." Schmorrow v. Sentry Ins. Co., 405 N.W. 2d 672, 675 (Wis. App. 1987).

While it may be completely understandable for a petitioner to want to avoid intermediate levels of judicial review and start with the highest court; unless there is a specific authorization for this appeal, it should be dismissed.

Unless the jurisdiction statutes are strictly applied, there will be no constraint on petitioners to appeal in the proper court. Moreover, it motivates petitioners to file in both the appellate and district courts, as did these Petitioners. The overall result is unfair to respondents generally, who would not

have the benefit of a trial-type, de novo proceeding when the appeal is of an informal adjudication, and who may have to respond to two petitions, one of which is obviously without jurisdiction.

B. The Jurisdiction Statutes Provide For Supreme Court Jurisdiction Over Formal Adjudicative Proceedings And District Court Jurisdiction Over Informal Adjudicative Proceedings.

The Petitioners base their right to bring this Petition for Review solely upon a provision of the Supreme Court's jurisdiction statute, Utah Code Ann. § 78-2-2(3)(e) (1987 and Supp. 1991). Utah Code Ann. § 78-2-2(3)(e)(iii) provides:

- (3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals over:

. . . .

- (e) final orders and decrees in formal adjudicative proceedings originating with:

. . . .

- (iii) the Board of State Lands and Forestry;

- (f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (e);

(Emphasis added.)

The jurisdiction of the District Courts to review administrative agency adjudications is in Utah Code Ann. § 78-3-4 (5)(1987 and Supp. 1991) provides that: "The district court has jurisdiction to review agency adjudicative proceedings as set forth in Chapter 46b, Title 93, and shall comply with the

requirements of that chapter, in its review of agency adjudicative proceedings."(Emphasis added).²

Reading these statutes together, it is becomes clear that the legislative intent was that the appellate courts would have jurisdiction to review agency "formal adjudicative proceedings", while the district courts have jurisdiction to review agency "informal adjudicative proceedings". Therefore, the proper Court for judicial review will depend upon whether the agency proceeding was "formal" or "informal."

There are three reasons to read the statutes this way. First, the statutory language, especially when read with UAPA, is clear--there is no ambiguity. Second, the legislative history, apparent from the 1988 UAPA amendments to the Supreme Court and District Court jurisdiction statutes, shows this to be the legislature's intent. Third, the public policy that appellate review be only on an adequate record, calls for district court de novo review of informal adjudicative proceedings in order to ensure the creation of an adequate record for review, with more focused issues, more opportunity for settlement, and other benefits of a formal proceeding.

² Chapter 46b, Title 63, is the Utah Administrative Procedures Act.

1. The Statutory Language is Clear.

We see no ambiguity in the Supreme Court's jurisdictional statute. To properly read a statute requires interpretation of the terms in "accord with usually accepted meanings" and the "plain meaning of the language at issue in the statute". Savage Industries v. Utah State Tax Comm., 811 P.2d 664, 672 (Utah 1991). Here the terms "final order and decrees in formal adjudicative proceedings...originating with the Board of State lands and Forestry", and the term "informal adjudicative proceedings" are at issue. Utah Code Ann. § 78-2-2(3)(e)(iii) and § 78-3-4(5).

There is no ambiguity in the term of art "final order and decree". The terms "final order and decree" are used throughout the code and caselaw interchangeably and synonymously. Utah Code Ann. § 78-2-2(3)(e)(iii) and § 78-3-4(5). The terms were used in the same context in the predecessor to this statute since 1943. Utah Code § 20-2-2 (1943). Whether the review is of a "final order, decree or other final agency action, it still must be "in formal adjudicative proceedings...originating with the Board of State Lands and Forestry" for this Court to have jurisdiction. Utah Code Ann. § 78-2-2(3)(e)(iii)

a. The Legislative Intent.

The most basic rule of statutory construction is that statutes are construed to give effect to the legislature's underlying intent. Savage Industries v. Utah State Tax Comm.,

811 P.2d 664, 672 (Utah 1991). Legislative intent can be found from legislative history, such as the prior amendments, and from the "plain meaning of the language at issue in the statute."

"In determining the legislative intent of a statute, 'the statute should be considered in light of the purpose it was designed to serve and so applied to carry out the purpose if it can be done consistent with its language'". Savage Industries at 672, quoting Utah County v. Orem City, 699 P.2d 707, 708 (Utah 1985).

The legislative purpose of the Supreme Court's jurisdiction statute is to provide direct jurisdiction from formal adjudications of certain state agencies and appellate jurisdiction from the district court review of informal agency adjudication. Since the "formal/informal" distinction comes from directly from UAPA, and UAPA's 1988 amendments, which included an amendment of the jurisdiction statutes, statutory construction of the jurisdiction statute will require a review of UAPA.

b. The Utah Administrative Procedures Act.

UAPA was intended to have comprehensive application to agency actions and simplify jurisdiction for judicial review of administrative actions of state agencies.

An "adjudicative proceeding" under UAPA, Utah Code Ann. § 63-46b-1(1989 and Supp. 1991) is broadly defined as:

(a) all state agency actions that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons,

including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right or license; and

(b) judicial review of all such actions.

UAPA provides separate procedural provisions and judicial review jurisdiction authorization for "informal" and "formal" adjudications. Under UAPA, "informal" adjudications, which do not have the procedural attributes of trial-type, quasi-judicial proceedings, go to the District Court for de novo review. Utah Code Ann. § 63-46b-5 (1987)(procedures) and Utah Code Ann. § 63-46b-15 (1987 & Supp. 1990)(jurisdiction); Utah Code Ann. § 78-3-4(5) (1987 & Supp. 1990)(District Court jurisdiction incorporation of UAPA).

"Formal" adjudications, which are on the record and have the attributes of a trial court, may go directly to either the Utah Supreme Court or the Court of Appeals, depending on the particular agency involved. Utah Code Ann. § 63-46b-6 to 10 (1987)(procedures) and Utah Code Ann. § 63-46b-16 (1987) (jurisdiction); Utah Code Ann. § 78-2-2(3)(e) (1987 & Supp. 1990)(Supreme Court) and Utah Code Ann. § 78-2a-3 (2) (1987 & Supp. 1990)(Court of Appeals).

Although UAPA does not provide a statutory definition of either the "informal" or "formal" adjudicative proceeding, the basic difference is in the procedures required. Informal adjudicative proceedings lack the discovery, intervention, evidentiary rules, motion practice, right of cross examination

and all the other trial-type procedures of a formal adjudicative proceeding. An informal adjudication may or may not include a hearing, with testimony, evidence and "comment on the issues", but provides specific notice provisions and for a written order, such as the Division's ROD.

Unlike the informal proceeding, the formal adjudicative proceeding is fully described in five UAPA sections. The informal adjudication has been described as a "residual category including any agency actions that are not rulemaking and that need not be conducted through "on the record" hearings. U.S. v. Diapulse, 768 F.2d 826, 829 (7th Cir. 1985).

The basic rationale for the "formal"/"informal" distinction is obvious. "Informal" agency actions have to go first to the district court for trial in order to generate an adequate record for appellate review, while "formal" adjudications already have a reviewable record for appellate review.

c. The Judicial Review Provisions Of UAPA Apply Even When UAPA Procedures Do Not Apply To The Agency Action.

To settle any questions of whether UAPA applies to judicial review even when its procedural requirements may not otherwise apply, the statute has both specific and general exceptions for judicial review. Utah Code Ann. § 63-46b-1(2)(g)(1989 & Supp. 1990), provides that UAPA does not apply to contracts for the sale of real property, "except for. . . judicial review of those

actions." (Emphasis added.) Utah Code Ann. § 63-46b-3(4)(1989) provides that: When initial agency determinations or actions are not governed by this chapter, but agency and judicial review of those initial determinations are subject to the provisions of this chapter, the request for agency action seeking review must be filed with the agency within the time period prescribed by the agencies rules." (Emphasis added).

Because the imposition of UAPA provisions was thought too awkward and burdensome for many ministerial government actions, there are a list of exempted actions in the first section of UAPA, including the purchase and sale of land. However, in view of due process and appeal considerations, some review of even those ministerial was thought proper. In addition, specific statutes provided for administrative hearings after the enactment of UAPA, such as the Trust Land Management Act. Utah Code Ann. § 65A-1-7 (1986 and Supp. 1991). UAPA ensures that there will be no question about where petitioners appeal, depending on the formality of the proceeding.

2. The Legislative History Of The Jurisdiction Statute.

The jurisdiction statutes for the two appellate courts, Chapters 2 and 2a, were amended in 1988 and 1989 expressly to dovetail with UAPA, as part of the omnibus amendments to UAPA. Utah Code Ann. § 78-2-2(6) now provides that: "The Supreme Court shall comply with the requirements of Chapter 46b, Title 63, in its review of agency adjudicative proceedings." (Emphasis

added). Identical provisions are provided for the Court of Appeals (§ 78-2a-3(4)) and the District Court (§ 78-3-4(5)).

In 1987, when UAPA was first enacted, subsection (6) was added to Utah Code Ann. § 78-2-2, which provided simply that: "The Supreme Court shall comply with the requirements of Chapter 46b, Title 63, in its review of agency adjudicative proceedings." In 1988, as part of the UAPA amendments, the key phrase "formal adjudicative proceedings" was substituted for the term "cases," in the section that provides "appellate" jurisdiction over five agencies, including the Board of State Lands and Forestry. The prior language read: "final orders and decrees in cases...originating with the Board of State Lands." Utah Code Ann. § 78-2-2 (1987)(amended 1987, effective 1988; amended 1989).

The legislative history, in the UAPA amendments to the jurisdiction statutes, shows the legislature's intent to have UAPA's "informal/formal" distinction apply for jurisdiction.

3. The Public Policy For Judicial Review On The Record Calls For District Court Review Of Informal Adjudicative Proceedings.

The public policies that call for review on the record, that underlie UAPA and that favor judicial economy, support this Court's ruling, once and for all, that jurisdiction of informal adjudications originating in the Division of State Lands lies in the District Courts.

Appellate review of an administrative adjudication, like any adjudication, is "on the record". As explained by Peatross v.

Board of Commissioners of Salt Lake County, 555 P.2d 281, 284 (Utah 1976): "appellate jurisdiction is the authority to review the action or judgments of an inferior tribunal upon the record made in that tribunal and to affirm, modify or reverse." Quoted by State v. Humphrey 794 P.2d 496, 497 (Utah 1990).

An adequate record for appellate review of an agency adjudication is only possible after either a trial by the District Court or a formal, trial-type proceeding by the agency. Since informal adjudicative proceedings by definition lack the trial-type procedures and the full, on the record fact-finding that facilitate appellate court judicial review, appellate review can never truly be "on the record", and may be awkward at best, because it invites parties to quarrel over their version of the "facts" in the briefs.

A formal proceeding benefits both parties, once a dispute rises to that level. Not only is there more opportunity for discovery and fact-finding, there is more opportunity to resolve disputes and narrow issues through the ongoing involvement of an adjudicator. A formal adjudication, whether by agency or district court, aids the appellate court because it produces a more reviewable record, less need for remand, and issues that are more likely finely-honed and genuine.

C. The Agency Action Under Review Was An Informal Adjudicative Proceeding Of The Division..

The agency action which Petitioners seek to have reviewed was an informal adjudicative proceeding by the Division of State Lands and Forestry. Petitioners do not allege that any "formal adjudicative proceeding" took place, or was required.

1. Petitioners Only Seek Review Of A Division Action.

Petitioners have concurrently filed actions in both this Court and the Third District Court. In both their Petition for Review and their Complaint, the Petitioners seek judicial review of "a sale of State Trust Lands which the Division of State Lands and Forestry purported to conduct on February 20, 1991. The date of final agency action to be reviewed is the date of sale on February 20, 1991 or the date of the certificate of sale, on February 25, 1991." Docketing Statement, April 12, 1991.

(Emphasis added.)

2. Both Board and Division Adjudications Are Designated By Rule To Be Informal.

UAPA provides that "an agency may, by rule, "designate categories of adjudicative proceedings to be conducted informally." Utah Code Ann. § 63-46b-4 (1989 and Supp. 1991).

The Board and Division have such a rule:

R-632-8-2 Initial Designation of All Adjudicative Proceedings as Informal

1. All requests for agency adjudications are initially designated as informal adjudications. Requests for action include applications for leases, permits, easements,

sale of state lands, exchange of state lands, sale of forest products and any other disposition of resources under the authority of the agency or other matter where law applicable to the agency permits parties to initiate adjudicative proceedings.

2. All adjudications commenced by the agency shall be initially designated as informal adjudications. Agency adjudications include actions relating leases, permits, easements, sales contracts, and other agreements under the authority of the agency.

(Emphasis added). This rule applies to all requests for adjudications and all adjudications actually commenced, including the applications for sales, and as the sales contract itself sought to be reviewed by Petitioners (the "Certificate of Sale").

3. The Division's Sale of Lands Was In Fact Not A Formal Adjudicative Proceeding.

Under the rules governing sales of state lands, R632-80 a sale involves an application (R632-80-3), the determination whether to sell, which is based on numerous factors, including an economic and land use analysis. Rules Governing the Management and Use of State Lands in Utah, R632-80-2 to -5 (effective September 4, 1990). After the sales determination in the ROD, and the Division determines to sell state land, there is an appraisal, advertisement and public notice, and a public bidding process (R632-80-5).

After an application is received, the Division issues notice, and requests comments from the State Resource Development Coordinating Committee, which included Petitioners SUWA and UPAC,

the Division's determination is set forth by the Division's Record of Decision. Review before the Board is then available if a petition is filed within 14 days of the ROD, otherwise the sale goes forward. Rules Governing the Management and Use of State Lands in Utah, R632-80-4(4) and R632-130-1 to 4(4). (A copy of the Rules is attached to this brief).

None of these actions can be considered the trial-type evidentiary "formal adjudicative proceeding" required by UAPA, and therefore must fall into the residual "informal adjudicative proceeding" category.

Petitioners could have timely petitioned the Board to hold a hearing under the newly enacted provisions for Board review of the final Division's actions, such as this Division land sale. Utah Code Ann. § 65A-1-7.

Under that provision, the Division Record of Decision would be reviewed to "consider whether the action is consistent with statutes, rules or board policy." Utah Code Ann. § 65A-1-1(3). Utah Code Ann. § 65A-1-7(5) then provides that "judicial review of final board action shall be governed by Chapter 46b, Title 63, Administrative Procedures Act."

In fact, after this Petition was filed with the Court, these same Petitioners challenged a second land sale on identical grounds, but timely requested a Board hearing, which was held June 14, 1991 (Board order attached as addendum to this brief).

That proceeding was expressly an "informal adjudicative proceeding", as allowed by the Board's rules.

To allow direct Supreme Court review would not only circumvent the jurisdiction of this Court, and the UAPA requirements, but the jurisdiction of the Board of State Lands and Forestry. To sanction this avenue for review, without at least first requiring District Court de novo review, would rob the Board of the limited hearing authority the legislature granted it in 1988.

CONCLUSION

The Court should dismiss the Petition for Review because it was not a "formal adjudicative proceeding" of the Board of State Lands and Forestry, but rather an "informal adjudicative proceeding" of the Division, and allow review to

proceed under the Complaint filed in the District Court.

Respectfully submitted this 29th day of July, 1991.

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MAILING CERTIFICATE

This is to certify that four copies of the State
Respondents' Brief on Jurisdictional Issues was mailed to the
following:

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this 29th day of July, 1991.

David S. Christensen

ADDENDUM

1. Statutes.
2. Rules Governing The Use and Management of State Lands in Utah.
3. Order of the Board, June 14, 1991.

Statutes

78-3-4. Jurisdiction — Transfer of cases to circuit court — Appeals.

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

(3) Under the general supervision of the presiding officer of the Judicial Council and subject to policies established by the Judicial Council, cases filed in the district court, which are also within the concurrent jurisdiction of the circuit court, may be transferred to the circuit court by the presiding judge of the district court in multiple judge districts, or the district court judge in single judge districts. The transfer of these cases may be made upon the court's own motion or upon the motion of either party for adjudication. When an order is made transferring a case, the court shall transmit the pleadings and papers to the circuit court to which the case is transferred. The circuit court has the same jurisdiction as if the case had been originally commenced in the circuit court and any appeals from final judgments shall be to the Court of Appeals.

(4) Appeals from the final orders, judgments, and decrees of the district court are under Sections 78-2-2 and 78-2a-3.

(5) The district court has jurisdiction to review agency adjudicative proceedings as set forth in Chapter 46b, Title 63, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-3-4; L. 1983, ch. 75, § 2; 1986, ch. 47, § 50; 1987, ch. 161, § 305; 1988, ch. 248, § 10.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, rewrote Subsec-

tion (5) which formerly read "The district court shall comply with the requirements of Chapter 46b, Title 63, in its review of agency adjudicative proceedings" and made minor stylistic changes in Subsections (1) and (2).

NOTES TO DECISIONS

Cited in *Heninger v. Ninth Circuit Court*, 739 P.2d 1108 (Utah 1987).

78-3-6. Terms — Minimum of once quarterly.

Each district court shall hold court at the county seat of each county within the district at least once in each quarter of the year.

History: L. 1952, ch. 58, § 1; C. 1943, Supp., 104-3-6; L. 1988, ch. 248, § 11.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, rewrote the sec-

tion which formerly read "There shall be held at the county seat of each county at least three terms of the district court in each year."

78-3-7 to 78-3-11. Repealed.

Repeals. — Laws 1988, ch. 248, § 50 repeals §§ 78-3-7 and 78-3-8, Utah Code Annotated 1953, § 78-3-9, as amended by Laws 1984, ch. 67, § 65, and §§ 78-3-10 and 78-3-11, Utah Code Annotated 1953, relating to terms of district courts, effective April 25, 1988.

78-3-11.5. State District Court Administrative System - Primary and secondary locations.

(1) There is established a State District Court Administrative System. The Judicial Council shall administer the operation of the system.

(2) In this chapter, "court system" means the State District Court Administrative System.

(3) Counties participating in the system are:

(a) primary locations, that are directly administered by the state court administrator; or

(b) secondary locations, that are administered by the county government by contract with the state court administrator.

(4) Until otherwise provided by law, the following county seats, if in the state district court system, are primary district court locations:

- (a) Brigham City, Box Elder County;
- (b) Logan, Cache County;
- (c) Ogden, Weber County;
- (d) Farmington, Davis County;
- (e) Salt Lake City, Salt Lake County;
- (f) Tooele, Tooele County;
- (g) Provo, Utah County;
- (h) Parowan, Iron County;
- (i) St. George, Washington County;
- (j) Richfield, Sevier County;
- (k) Price, Carbon County;
- (l) Moab, Grand County; and
- (m) Vernal, Uintah County.

(5) Until otherwise provided by law, the following county seats, if in the court system, are secondary district court locations:

- (a) Randolph, Rich County;
- (b) Morgan, Morgan County;
- (c) Coalville, Summit County;
- (d) Nephi, Juab County;
- (e) Fillmore, Millard County;
- (f) Heber City, Wasatch County;
- (g) Beaver, Beaver County;
- (h) Panguitch, Garfield County;
- (i) Kanab, Kane County;
- (j) Junction, Piute County;
- (k) Manti, Sanpete County;
- (l) Loa, Wayne County;
- (m) Manila, Daggett County;
- (n) Duchesne, Duchesne County;
- (o) Castle Dale, Emery County; and
- (p) Monticello, San Juan County.

substituted "determines" for "decides" at the end of the fourth sentence.

The 1990 amendment, effective April 23, 1990, deleted "next" after "January" and made punctuation changes in Subsection (2); deleted "not" following "chief justice may" in the third

sentence of Subsection (3); deleted "additional" before "duties" in Subsection (5); deleted "where not inconsistent with the law" following "chief justice" and added "as consistent with the law" at the end of Subsection (6).

78-2-2. Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) a judgment of the Court of Appeals;
- (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
- (c) discipline of lawyers;
- (d) final orders of the Judicial Conduct Commission;
- (e) final orders and decrees in formal adjudicative proceedings originating with:

- (i) the Public Service Commission;
- (ii) the State Tax Commission;
- (iii) the Board of State Lands and Forestry;
- (iv) the Board of Oil, Gas, and Mining; or
- (v) the state engineer;

(f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (e);

(g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;

(h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;

(i) appeals from the district court involving a conviction of a first degree or capital felony; and

(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

- (a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;
- (b) election and voting contests;
- (c) reapportionment of election districts;
- (d) retention or removal of public officers;
- (e) general water adjudication;
- (f) taxation and revenue; and
- (g) those matters described in Subsection (3)(a) through (f).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the

Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Chapter 46 Title 63, in its review of agency adjudicative proceedings.

History: C. 1953, 78-2-2, enacted by L. 1986, ch. 47, § 41; 1987, ch. 161, § 303; 1988, ch. 248, § 5; 1989, ch. 67, § 1.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, substituted "formal adjudicative proceedings" for "cases" in Subsection (3)(e); added Subsection (3)(f); redesignated former Subsections (3)(f) to (3)(i) accordingly; substituted "(i)" for "(h)" at the end

of Subsection (4)(g); and made minor stylistic changes.

The 1989 amendment, effective April 2 1989, added "and Forestry" at the end of Subsection (3)(e)(iii); rewrote Subsection (4)(i) which read "first degree and capital felony convictions"; substituted "(f)" for "(i)" at the end of Subsection (4)(g); and made minor stylistic changes.

NOTES TO DECISIONS

ANALYSIS

Docketing statement.

—Reference to subsection.

Cited.

Docketing statement.

—Reference to subsection.

In all cases appealed after January 1, 1987, reference in the docketing statement to this

section will be considered insufficient; instead the appropriate subsection must be included to alert the Supreme Court that it has original appellate jurisdiction over the case. Gregory v. Northwest Invs., Ltd., 735 P.2d 33 (Utah 1987).

Cited in Conder v. A.L. Williams & Assocs 739 P.2d 634 (Utah Ct. App. 1987).

COLLATERAL REFERENCES

Utah Law Review. — Recent Developments in Utah Law — The Utah Court of Appeals, 1988 Utah L. Rev. 150.

78-2-4. Supreme Court — Rulemaking, judges pro tempore, and practice of law.

NOTES TO DECISIONS

Cited in Stewart v. Coffman, 748 P.2d 579 (Utah Ct. App. 1988).

COLLATERAL REFERENCES

Utah Law Review. — Recent Developments in Utah Law — Judicial Decisions — Criminal Law, 1987 Utah L. Rev. 137.

78-2-5. Repealed.

Repeals. — Laws 1988, ch. 248, § 50 repeals § 78-2-5, Utah Code Annotated 1953, providing that the Supreme Court is always open effective April 25, 1988.

63-46a-13. Repealed.

Repeals. — Laws 1990, ch. 224, § 4 repeals § 63-46a-13, as enacted by L. 1985, ch. 158, § 1, relating to actions for declaratory judgment to determine the validity of a rule, effective April 23, 1990. For present comparable provisions, see § 63-46a-12.1.

CHAPTER 46b

ADMINISTRATIVE PROCEDURES ACT

Section 63-46b-1.	Scope and applicability of chapter.	Section 63-46b-15.	Judicial review — Informal adjudicative proceedings.
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63-46b-1. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state of Utah and govern:

- (a) all state agency actions that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and
- (b) judicial review of all such actions.

(2) The provisions of this chapter do not govern:

- (a) the procedures for promulgation of agency rules, or the judicial review of those procedures or rules;
- (b) the issuance of any notice of a deficiency in the payment of a tax, the decision to waive penalties or interest on taxes, the imposition of, and penalties or interest on, taxes, or the issuance of any tax assessment, except that the provisions of this chapter govern any agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of those actions;
- (c) state agency actions relating to extradition, to the granting of pardons or parole, commutations or terminations of sentences, or to the rescission, termination, or revocation of parole or probation, to actions and decisions of the Psychiatric Security Review Board relating to discharge, conditional release, or retention of persons under its jurisdiction, to the discipline of, resolution of grievances of, supervision of, confinement of, or the treatment of, inmates or residents of any correctional facility, the Utah State Hospital, the Utah State Training School, or persons in the custody or jurisdiction of the Division of Mental Health, or persons on probation or parole, or judicial review of those actions;
- (d) state agency actions to evaluate, discipline, employ, transfer, reassign, or promote students or teachers in any school or educational institution, or judicial review of those actions;
- (e) applications for employment and internal personnel actions within an agency concerning its own employees, or judicial review of those actions;

(f) the issuance of any citation or assessment under Chapter 9, Title the Occupational Safety and Health Act, except that the provisions of that chapter govern any agency action commenced by the employer or other person authorized by law to contest the validity or correctness of such citation or assessment;

(g) state agency actions relating to management of state funds, contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state except as provided in such contracts, or judicial review of those actions;

(h) state agency actions under Article 3, Chapter 1, Title 7, and Chapters 2, 8a, and 19, Title 7, and Chapter 30, Title 63 or judicial review of those actions;

(i) the initial determination of any person's eligibility for unemployment benefits, the initial determination of any person's eligibility for benefits under Chapters 1 and 2, Title 35, or the initial determination of a person's unemployment tax liability;

(j) state agency actions relating to the distribution or award of monetary grants to or between governmental units, or for research, development, or the arts, or judicial review of those actions;

(k) the issuance of any notice of violation or order under Chapter 8, Title 12, 13, or 14, Title 26, except that the provisions of this chapter govern any agency action commenced by any person authorized by law to contest the validity or correctness of any such notice or order;

(l) state agency actions, to the extent required by federal statute or regulation to be conducted according to federal procedures;

(m) the initial determination of any person's eligibility for government or public assistance benefits, or the right of any person to obtain documents or information from an agency; and

(n) state agency actions relating to hunting or fishing licenses, or permits for use of state recreational facilities.

(3) The provisions of this chapter do not affect any legal remedies otherwise available to:

- (a) compel an agency to take action; or
- (b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering conferences with parties and interested persons to:

- (i) encourage settlement;
- (ii) clarify the issues;
- (iii) simplify the evidence;
- (iv) facilitate discovery; or
- (v) expedite the proceedings; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56, respectively, of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5) (a) Declaratory proceedings authorized by Section 63-46b-21 are not governed by this chapter, except as explicitly provided in that section.

(b) Judicial review of declaratory proceedings authorized by Section 63-46b-21 are governed by this chapter.

(6) This chapter does not preclude an agency from enacting rules affecting or governing adjudicative proceedings or from following any of those rules, if the rules are enacted according to the procedures outlined in Chapter 46a, Title 63, the Utah Administrative Rulemaking Act, and if the rules conform to the requirements of this chapter.

(7) If the attorney general issues a written determination that any provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of those provisions to that agency shall be suspended to the extent necessary to prevent the denial. The attorney general shall report the suspension to the Legislature at its next session.

(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening any time period prescribed in this chapter, except those time periods established for judicial review.

History: C. 1953, 63-46b-1, enacted by L. 1987, ch. 161, § 257; 1988, ch. 72, § 15; 1990, ch. 306, § 2.

Amendment Notes. — The 1990 amendment, effective March 13, 1990, in Subsection (2)(c), inserted "to actions and decisions of the Psychiatric Security Board relating to dis-

charge, conditional release, or retention of persons under its jurisdiction," deleted "or mental institution" after "any correctional facility," and inserted "the Utah State Hospital, the Utah State Training School, or persons in the custody or jurisdiction of the Division of Mental Health."

63-46b-8. Procedures for formal adjudicative proceedings — Hearing procedure.

NOTES TO DECISIONS

Cross-examination.

Agency decision revoking social worker's license was reversed and his case was remanded for a new hearing, because the failure to afford him an opportunity to cross-examine the wit-

nesses against him resulted in "substantial prejudice." D.B. v. Division of Occupational & Professional Licensing, 779 P.2d 1145 (Utah Ct. App. 1989).

63-46b-10. Procedures for formal adjudicative proceedings — Orders.

NOTES TO DECISIONS

Cited in USX Corp. v. Industrial Comm'n, 781 P.2d 883 (Utah Ct. App. 1989).

63-46b-14. Judicial review — Exhaustion of administrative remedies.

NOTES TO DECISIONS

ANALYSIS

Administrative review or rehearing.
Commencement and extension of filing period.
"Filing of petition" construed.
Final appealable order.

Administrative review or rehearing.
Homeowners association was statutorily required to first seek review or rehearing by the public service commission of its ruling in order to invoke the jurisdiction of the Supreme Court to review the issue of standby water fees, because the commission had not been properly afforded the opportunity to address the issue on the merits. Hi-Country Homeowners Ass'n v. Public Serv. Comm'n, 779 P.2d 680 (Utah 1989).

Commencement and extension of filing period.

The 30-day time period to file an appeal commences when the final agency order issues and not when received by a party. The period is not extended to allow for mailing time. Silva v. Department of Emp. Sec., 126 Utah Adv. Rep. 4 (Ct. App. 1990).

"Filing of petition" construed.

The operative act to commence petitioner's

appeal is the filing of the petition with the clerk. Deposit in the mail does not accomplish the act of filing. The act of filing a document requires that the document be deposited with the court clerk, and not with the post office or some other mechanism for delivery. Silva v. Department of Emp. Sec., 126 Utah Adv. Rep. 4 (Ct. App. 1990).

Service of a petition for review or notice of appeal on an opposing party does not substitute for nor accomplish the act of filing the appeal with the clerk. Silva v. Department of Emp. Sec., 126 Utah Adv. Rep. 4 (Ct. App. 1990).

Final appealable order.

Industrial commission's order adopting administrative law judge's findings of fact, but remanding for a determination of whether the petitioner should receive medical expense was not a final appealable order. Sloan v. Board of Review, 781 P.2d 463 (Utah Ct. App. 1989).

An order of the agency is not final so long as it reserves something to the agency for further decision. Sloan v. Board of Review, 781 P.2d 463 (Utah Ct. App. 1989).

63-46b-15. Judicial review — Informal adjudicative proceedings.

(1) (a) The district courts shall have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings except that the juvenile court shall have jurisdiction over all state agency actions relating to removal or placement decisions regarding children in state custody.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains his principal place of business.

(2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

- (i) the name and mailing address of the party seeking judicial review;
- (ii) the name and mailing address of the respondent agency;
- (iii) the title and date of the final agency action to be reviewed, together with a duplicate copy, summary, or brief description of the agency action;

History: C. 1953, 63-46b-1, enacted by L. 1987, ch. 161, § 257; 1988, ch. 72, § 15.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, inserted "the decision to waive penalties or interest on taxes, the imposition of, and penalties or interest on, taxes" in Subsection (2)(b); deleted Subsections (c) and (d), containing the provisions that were inserted in Subsection (2)(b), and redesignated the following subsections accordingly; deleted "under the supervision of the Department of Corrections" after "parole" near the end of present Subsection (2)(c); deleted "otherwise covered by the provisions of this chapter" after "educational institution" in present Subsection (2)(d); added "applications for employment and" in present Subsection (2)(e) and added "or judicial review of those actions" at the end of present Subsections (e), (g), (h), and (j); inserted "management of state funds, and" and "products, real property, supplies" in present Subsection (2)(g); inserted "and Chapter 30, Title 63" in present Subsection (2)(h); rewrote present Subsection (2)(i), which had read, "the determination of any person's eligibility for unemployment benefits, or the determination

of a person's unemployment tax liability, except that this chapter governs agency and judicial review of all those determinations"; inserted "to or between governmental units" in present Subsection (2)(j); inserted "to the extent" and deleted "solely" after "conducted" in present Subsection (2)(l); rewrote present Subsection (2)(m), which had read, "the initial determination of any person's eligibility for government or public assistance benefits, except that this chapter governs agency and judicial review of all those determinations"; added Subsections (2)(n) and (3), redesignating the following subsections accordingly; in present Subsection (4), rewrote the introductory paragraph, which had read, "This chapter does not preclude the presiding officer of the adjudicative proceeding from ordering conferences with the parties to," redesignated former Subsections (a) to (e) as present Subsections (a)(i) to (a)(v), and added Subsection (b); added Subsection (9); and made minor stylistic changes.

Effective Dates. — Laws 1987, ch. 161, § 315 makes the act effective on January 1, 1988.

COLLATERAL REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d Administrative Law §§ 315 to 775.

C.J.S. — 73A C.J.S. Public Administrative Law and Procedure §§ 115 to 292.

63-46b-2. Definitions.

(1) As used in this chapter:

(a) "Adjudicative proceeding" means an agency action or proceeding described in Section 63-46b-1.

(b) "Agency" means a board, commission, department, division, officer, council, office, committee, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.

(c) "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

(d) "Declaratory proceeding" means a proceeding authorized and governed by Section 63-46b-21.

(e) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

(f) "Party" means the agency or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

(g) "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental

subdivision or its units, public or private organization or entity of any character, or another agency.

(h) (i) "Presiding officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding.

(ii) If fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.

(iii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

(i) "Respondent" means a person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.

(j) "Superior agency" means an agency required or authorized by law to review the orders of another agency.

(2) This section does not prohibit an agency from designating by rule the names or titles of the agency head or the presiding officers with responsibility for adjudicative proceedings before the agency.

History: C. 1953, 63-46b-2, enacted by L. 1987, ch. 161, § 258; 1988, ch. 169, § 42.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, deleted "commission" following "committee" in Subsection (1)(b).

Effective Dates. — Laws 1987, ch. 161, § 315 makes the act effective on January 1, 1988

63-46b-3. Commencement of adjudicative proceedings.

(1) Except as otherwise permitted by Section 63-46b-20, all adjudicative proceedings shall be commenced by either:

(a) a notice of agency action, if proceedings are commenced by the agency; or

(b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) A notice of agency action shall be filed and served according to the following requirements:

(a) The notice of agency action shall be in writing, signed by a presiding officer, and shall include:

(i) the names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency;

(ii) the agency's file number or other reference number;

(iii) the name of the adjudicative proceeding;

(iv) the date that the notice of agency action was mailed;

(v) a statement of whether the adjudicative proceeding is to be conducted informally according to the provisions of rules adopted under Sections 63-46b-4 and 63-46b-5, or formally according to the provisions of Sections 63-46b-6 to 63-46b-11;

(vi) if the adjudicative proceeding is to be formal, a statement that each respondent must file a written response within 30 days of the mailing date of the notice of agency action;

(vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute or rule, a statement of the time and place of any

History: C. 1953, 63-46b-3, enacted by 1987, ch. 161, § 259; 1988, ch. 72, § 16.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, deleted "and a request for agency action" before "shall be filed" in Subsection (2); deleted "When adjudicative proceedings are commenced by the agency" at the beginning of Subsection (2)(a); substituted "30 days" for "20 days" in Subsection (2)(a)(vi); substituted "required by statute or rule" for "to be held in an informal adjudicative proceeding" in Subsection (2)(a)(vii); rewrote Subsection (2)(a)(viii) before "a statement," which had read, "if the adjudicative proceeding is to be informal and the agency's rules do not provide for a hearing"; added "When adjudicative proceedings are commenced by the agency" at the beginning in Subsection (2)(b) and added Subsection (2)(b)(iii); redesignated former Subsection (2)(c) as present Subsection (3)(a) and in that subsection added "if known" at the end of Subsection (ii), deleted Subsection (iii), which had read, "the name of the adjudicative proceedings, if known," inserted "or action" in Subsection (v), and added "or agency action" in Subsection (vi); designated the second sentence in former Subsection (2)(d) as present Subsection (3)(b), redesignated former Subsection (2)(d) as present Subsection (3)(c), and in that subsection substituted "Subsection (3)(a)" for "Subsection (2)(c)"; deleted former Subsection (2)(e),

which had read, "In the case of adjudicative proceedings commenced under Subsection (2)(c) by a person other than the agency, the presiding officer shall promptly give notice by mail to all parties, or by publication when required by statute," and added Subsections (3)(d) and (e), redesignating former Subsections (e)(i) to (vii) as present Subsections (e)(iii)(A) to (G); inserted "one of a category" in Subsection (3)(e)(iii)(C); rewrote Subsection (3)(e)(iii)(D), which had read, "in the case of formal adjudicative proceeding, state that a written response must be filed within 20 days of the mailing or publication date of the request for agency action"; substituted "a scheduled and noticed hearing" for "the hearing" in Subsection (3)(e)(iii)(E); rewrote Subsection (3)(e)(iii)(F) before "state the parties' right," which had read, "if the adjudicative proceeding is to be informal and the agency's rules do not provide for a hearing"; redesignated former Subsection (2)(i) as present Subsection (4) and former Subsections (2)(f) to (2)(h) as present Subsections (5) to (7); inserted "agency and judicial" and "seeking review" in Subsection (4); substituted "allowed by this section" for "required by this section" in Subsection (5); and made minor stylistic changes.

Effective Dates. — Laws 1987, ch. 161, § 315 makes the act effective on January 1, 1988.

63-46b-4. Designation of adjudicative proceedings as formal or informal.

(1) The agency may, by rule, designate categories of adjudicative proceedings to be conducted informally according to the procedures set forth in rules enacted under the authority of this chapter if:

- (a) the use of the informal procedures does not violate any procedural requirement imposed by a statute other than this chapter;
- (b) in the view of the agency, the rights of the parties to the proceedings will be reasonably protected by the informal procedures;
- (c) in the view of the agency, the agency's administrative efficiency will be enhanced by categorizations; and
- (d) the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding.

(2) Subject to the provisions of Subsection (3), all agency adjudicative proceedings not specifically designated as informal proceedings by the agency's rules shall be conducted formally in accordance with the requirements of this chapter.

(3) Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if:

- (a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

History: C. 1953, 63-46b-4, enacted by L. § 315 makes the act effective on January 1, 1987, ch. 161, § 260.

Effective Dates. — Laws 1987, ch. 161,

1988.

63-46b-5. Procedures for informal adjudicative proceedings.

(1) If an agency enacts rules designating one or more categories of adjudicative proceedings as informal adjudicative proceedings, the agency shall, by rule, prescribe procedures for informal adjudicative proceedings that include the following:

(a) Unless the agency by rule provides for and requires a response, no answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed.

(b) The agency shall hold a hearing if a hearing is required by statute or rule, or if a hearing is permitted by rule and is requested by a party within the time prescribed by rule.

(c) In any hearing, the parties named in the notice of agency action or in the request for agency action shall be permitted to testify, present evidence, and comment on the issues.

(d) Hearings will be held only after timely notice to all parties.

(e) Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.

(f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(g) Intervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention.

(h) All hearings shall be open to all parties.

(i) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following:

(i) the decision;

(ii) the reasons for the decision;

(iii) a notice of any right of administrative or judicial review available to the parties; and

(iv) the time limits for filing an appeal or requesting a review.

(j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.

(k) A copy of the presiding officer's order shall be promptly mailed to each of the parties.

(2) (a) The agency may record any hearing.

(b) Any party, at his own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.

(3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

History: C. 1953, 63-46b-5, enacted by L. 1987, ch. 161, § 261; 1988, ch. 72, § 17.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, deleted "only" after "hold a hearing" and substituted "permitted by rule" for "permitted by statute" in Subsection (1)(b); substituted the present provision in Subsection (1)(e) for a previous provision that read, "Discovery is prohibited, and the agency may not issue subpoenas or other discovery orders"; deleted "the hearing or after

the parties' failure to request a hearing within the time prescribed by the agency's rules" and inserted "an informal adjudicative proceeding" in Subsection (1)(i), subdivided Subsection (2) and rewrote the provision in Subsection (2)(a), which had read, "All hearings shall be recorded at the agency's expense"; and made a minor stylistic change.

Effective Dates. — Laws 1987, ch. 161, § 315 makes the act effective on January 1, 1988.

63-46b-6. Procedures for formal adjudicative proceedings — Responsive pleadings.

(1) In all formal adjudicative proceedings, unless modified by rule according to Subsection 63-46b-3(5), the respondent, if any, shall file and serve a written response signed by the respondent or his representative within 30 days of the mailing date or last date of publication of the notice of agency action or the notice under Subsection 63-46b-3(3)(d), which shall include:

- (a) the agency's file number or other reference number;
- (b) the name of the adjudicative proceeding;
- (c) a statement of the relief that the respondent seeks;
- (d) a statement of the facts; and
- (e) a statement summarizing the reasons that the relief requested should be granted.

(2) The response shall be filed with the agency and one copy shall be sent by mail to each party.

(3) The presiding officer, or the agency by rule, may permit or require pleadings in addition to the notice of agency action, the request for agency action, and the response. All papers permitted or required to be filed shall be filed with the agency and one copy shall be sent by mail to each party.

History: C. 1953, 63-46b-6, enacted by L. 1987, ch. 161, § 262; 1988, ch. 72, § 18.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, in the introductory paragraph in Subsection (1), substituted "Subsection 63-46b-3(5)" for "Subsection 63-46b-3(2)(f)," inserted "if any" near the middle, substituted "30 days" for "20 days," in-

serted "or last date of publication" near the end, and substituted "notice under Subsection 63-46b-3(3)(d)" for "request for agency action"; and made minor stylistic changes.

Effective Dates. — Laws 1987, ch. 161, § 315 makes the act effective on January 1, 1988.

63-46b-7. Procedures for formal adjudicative proceedings — Discovery and subpoenas.

(1) In formal adjudicative proceedings, the agency may, by rule, prescribe means of discovery adequate to permit the parties to obtain all relevant information necessary to support their claims or defenses. If the agency does not enact rules under this section, the parties may conduct discovery according to the Utah Rules of Civil Procedure.

(2) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

(3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

History: C. 1953, 63-46b-7, enacted by L. § 315 makes the act effective on January 1, 1987, ch. 161, § 263. 1988.

Effective Dates. — Laws 1987, ch. 161,

63-46b-8. Procedures for formal adjudicative proceedings — Hearing procedure.

(1) Except as provided in Subsections 63-46b-3(d)(i) and (ii), in all formal adjudicative proceedings, a hearing shall be conducted as follows:

(a) The presiding officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.

(b) On his own motion or upon objection by a party, the presiding officer:

(i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

(ii) shall exclude evidence privileged in the courts of Utah;

(iii) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

(iv) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge.

(c) The presiding officer may not exclude evidence solely because it is hearsay.

(d) The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

(e) The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(f) All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(g) The hearing shall be recorded at the agency's expense.

(h) Any party, at his own expense, may have a person approved by the agency prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing.

(i) All hearings shall be open to all parties.

(2) This section does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing.

History: C. 1953, 63-46b-8, enacted by L. 1987, ch. 161, § 264; 1988, ch. 72, § 19.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, added "Except as provided in Subsections 63-46b-3(d)(i) and

(ii)" at the beginning of the section.

Effective Dates. — Laws 1987, ch. 161, § 315 makes the act effective on January 1, 1988.

63-46b-9. Procedures for formal adjudicative proceedings — Intervention.

(1) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the agency. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

- (a) the agency's file number or other reference number;
- (b) the name of the proceeding;
- (c) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and
- (d) a statement of the relief that the petitioner seeks from the agency.

(2) The presiding officer shall grant a petition for intervention if he determines that:

- (a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and
- (b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(3) (a) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(c) The presiding officer may impose the conditions at any time after the intervention.

History: C. 1953, 63-46b-9, enacted by L. § 315 makes the act effective on January 1, 1987, ch. 161, § 265. 1988
Effective Dates. — Laws 1987, ch. 161,

63-46b-10. Procedures for formal adjudicative proceedings — Orders.

In formal adjudicative proceedings:

(1) Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, or within the time required by any applicable statute or rule of the agency, the presiding officer shall sign and issue an order that includes:

- (a) a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative proceedings or on facts officially noted;
- (b) a statement of the presiding officer's conclusions of law;
- (c) a statement of the reasons for the presiding officer's decision;
- (d) a statement of any relief ordered by the agency;
- (e) a notice of the right to apply for reconsideration;
- (f) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and

- (g) the time limits applicable to any reconsideration or review.
- (2) The presiding officer may use his experience, technical competence, and specialized knowledge to evaluate the evidence.
- (3) No finding of fact that was contested may be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.
- (4) This section does not preclude the presiding officer from issuing interim orders to:
 - (a) notify the parties of further hearings;
 - (b) notify the parties of provisional rulings on a portion of the issues presented; or
 - (c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

History: C. 1953, 63-46b-10, enacted by L. 1987, ch. 161, § 266; 1988, ch. 72, § 20.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, added "unless that evidence is admissible under the Utah

Rules of Evidence" in Subsection (3).

Effective Dates. — Laws 1987, ch. 161, § 315 makes the act effective on January 1, 1988.

63-46b-11. Default.

- (1) The presiding officer may enter an order of default against a party if:
 - (a) a party in an informal adjudicative proceeding fails to participate in the adjudicative proceeding;
 - (b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or
 - (c) a respondent in a formal adjudicative proceeding fails to file a response under Section 63-46b-6.
- (2) An order of default shall include a statement of the grounds for default and shall be mailed to all parties.
- (3) (a) A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure.
 - (b) A motion to set aside a default and any subsequent order shall be made to the presiding officer.
 - (c) A defaulted party may seek agency review under Section 63-46b-12, or reconsideration under Section 63-46b-13, only on the decision of the presiding officer on the motion to set aside the default.
- (4) (a) In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding begun by a party that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.
 - (b) In an adjudicative proceeding that has no parties other than the agency and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

63-46b-14. Judicial review — Exhaustion of administrative remedies.

NOTES TO DECISIONS

ANALYSIS

Administrative review or rehearing.
Commencement and extension of filing period.
"Filing of petition" construed.
Final appealable order.

Administrative review or rehearing.

Homeowners association was statutorily required to first seek review or rehearing by the public service commission of its ruling in order to invoke the jurisdiction of the Supreme Court to review the issue of standby water fees, because the commission had not been properly afforded the opportunity to address the issue on the merits. *Hi-Country Homeowners Ass'n v. Public Serv. Comm'n*, 779 P.2d 680 (Utah 1989).

Commencement and extension of filing period.

The 30-day time period to file an appeal commences when the final agency order issues and not when received by a party. The period is not extended to allow for mailing time. *Silva v. Department of Emp. Sec.*, 126 Utah Adv. Rep. 4 (Ct. App. 1990).

"Filing of petition" construed.

The operative act to commence petitioner's

appeal is the filing of the petition with the clerk. Deposit in the mail does not accomplish the act of filing. The act of filing a document requires that the document be deposited with the court clerk, and not with the post office or some other mechanism for delivery. *Silva v. Department of Emp. Sec.*, 126 Utah Adv. Rep. 4 (Ct. App. 1990).

Service of a petition for review or notice of appeal on an opposing party does not substitute for nor accomplish the act of filing that appeal with the clerk. *Silva v. Department of Emp. Sec.*, 126 Utah Adv. Rep. 4 (Ct. App. 1990).

Final appealable order.

Industrial commission's order adopting an administrative law judge's findings of fact, but remanding for a determination of whether the petitioner should receive medical expenses, was not a final appealable order. *Sloan v. Board of Review*, 781 P.2d 463 (Utah Ct. App. 1989).

An order of the agency is not final so long as it reserves something to the agency for further decision. *Sloan v. Board of Review*, 781 P.2d 463 (Utah Ct. App. 1989).

63-46b-15. Judicial review — Informal adjudicative proceedings.

(1) (a) The district courts shall have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile court shall have jurisdiction over all state agency actions relating to removal or placement decisions regarding children in state custody.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains his principal place of business.

(2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

- (i) the name and mailing address of the party seeking judicial review;
- (ii) the name and mailing address of the respondent agency;
- (iii) the title and date of the final agency action to be reviewed, together with a duplicate copy, summary, or brief description of the agency action;

- (iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;
 - (v) a copy of the written agency order from the informal proceeding;
 - (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;
 - (vii) a request for relief, specifying the type and extent of relief requested;
 - (viii) a statement of the reasons why the petitioner is entitled to relief.
- (b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.
- (3) (a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.
- (b) The Utah Rules of Evidence apply in judicial proceedings under this section.

History: C. 1953, 63-46b-15, enacted by L. 1987, ch. 161, § 271; 1988, ch. 72, § 25; 1990, ch. 132, § 1.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, added the exception at the end of Subsection (1)(a).

63-46b-16. Judicial review — Formal adjudicative proceedings.

NOTES TO DECISIONS

ANALYSIS

Conflicting evidence.
Factual findings.
Substantial evidence test.
Substantial prejudice.
Whole record test.
Cited.

Conflicting evidence.

In undertaking a review, the appellate court will not substitute its judgment as between two reasonably conflicting views, even though the court might have come to a different conclusion had the case come before it for de novo review. It is the province of the board, not appellate courts, to resolve conflicting evidence, and where inconsistent inferences can be drawn from the same evidence, it is for the board to draw the inferences. *Grace Drilling Co. v. Board of Review*, 776 P.2d 63 (Utah Ct. App. 1989).

Factual findings.

Under Subsection (4)(d), the appellate court will not disturb the board's application of its factual findings to the law unless its determination exceeds the bounds of reasonableness and rationality. *Pro-Benefit Staffing, Inc. v. Board of Review*, 775 P.2d 439 (Utah Ct. App. 1989).

Substantial evidence test.

In applying the "substantial evidence test," the appellate court reviews the "whole record" before the court, and this review is distinguishable from both a de novo review and the "any competent evidence" standard of review. *Grace Drilling Co. v. Board of Review*, 776 P.2d 63 (Utah Ct. App. 1989).

The "substantial evidence test" of Subsection (4)(g) grants appellate courts greater latitude in reviewing the record than was previously granted under the Utah Employment Security Act's "any evidence of substance test." *Grace Drilling Co. v. Board of Review*, 776 P.2d 63 (Utah Ct. App. 1989).

"Substantial evidence" is more than a mere "scintilla" of evidence, though something less than the weight of the evidence. It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Grace Drilling Co. v. Board of Review*, 776 P.2d 63 (Utah Ct. App. 1989).

Substantial prejudice.

Agency decision revoking social worker's license was reversed and his case was remanded for a new hearing, where the failure to afford him an opportunity to cross-examine the witnesses against him resulted in "substantial prejudice." *D.B. v. Division of Occupational &*

TITLE 65A

STATE LANDS

Chapter

1. Board of State Lands and Forestry — Division of State Lands and Forestry.
2. Administration and Management of State Lands.
3. Illegal Activities on State Lands.
4. Acquisition and Disposition of Land by State Agencies.
5. Deposit and Allocation of Revenues from State Lands.
6. Mineral Leases.
7. Sale, Exchange, and Lease of State Lands.
8. Management of Forest Lands and Fire Control.
9. Management of Range Resources.
10. Management of Sovereign Lands.
11. State Forest and Wildland Designation.
12. Flood Control and Prevention.
13. Lands Granted Under the Carey Act.

CHAPTER 1

BOARD OF STATE LANDS AND FORESTRY — DIVISION OF STATE LANDS AND FORESTRY

Section		Section	
65A-1-1.	Definitions.		governed by Administrative Procedures Act.
65A-1-2.	Board of State Lands and Forestry — Creation — Responsibilities.	65A-1-8.	Board members and division employees — Prohibited from acquiring an interest in state lands.
65A-1-3.	Board of State Lands and Forestry — Membership — Appointment of successors — Chairman — Quorum.	65A-1-9.	Board members and division employees — Prohibited from interfering with an application to acquire an interest in state lands.
65A-1-4.	Division of State Lands and Forestry — Creation — Power and authority.	65A-1-10.	Proprietary geologic or financial information — Kept confidential — Board to adopt rules.
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65A-1-6.	Witnesses — Subpoena and oaths.	65A-1-12.	Filing date of applications and bids.
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65A-1-1. Definitions.

As used in this title:

- (1) "Board" means the Board of State Lands and Forestry.
- (2) "Division" means the Division of State Lands and Forestry.
- (3) "Multiple use" means the management of various surface and subsurface resources so they are utilized in the combination that will best meet the present and future needs of the people of this state.
- (4) "Public trust assets" means those lands and resources, including sovereign lands, administered by the division that are not part of the school or institutional trust lands.
- (5) "School and institutional trust lands" means those properties granted by the United States in the Utah Enabling Act to the state of Utah in trust and other lands transferred to the trust, which must be managed for the benefit of:
 - (a) the public school system; or
 - (b) the institutions of the state which are designated by the Utah Enabling Act.
- (6) "Sovereign lands" means those lands lying below the ordinary high water mark of navigable bodies of water at the date of statehood and owned by the state by virtue of its sovereignty.
- (7) "State lands" means all lands administered under the authority of the board and the division.
- (8) "Sustained yield" means the achievement and maintenance of high level annual or periodic output of the various renewable resources of land without impairment of the productivity of the land.

History: C. 1953, 65A-1-1, enacted by L. Effective Dates. — Laws 1988, ch. 121, 1988, ch. 121, § 2. § 19 makes the act effective on July 1, 1988. Utah Enabling Act. — See Volume 1A.

65A-1-2. Board of State Lands and Forestry — Creation — Responsibilities.

(1) The Board of State Lands and Forestry is created within the Department of Natural Resources. The board is the policymaking body for the Division of State Lands and Forestry. Where reference is made in the Utah Code to the State Land Board or the Board of State Lands, it shall be construed as referring to the Board of State Lands and Forestry, but only if the reference pertains to policymaking functions, powers, and duties. In all other instances, the reference shall be construed as referring to the Division of State Lands and Forestry. The board shall establish policy for:

- (a) the management of school and institutional trust lands and sovereign lands; and
 - (b) fire and forestry management responsibilities as prescribed in Chapter 8, Title 65A.
- (2) Policies shall be consistent with the provisions of the Utah Enabling Act, the Utah Constitution, and state law. The board shall adopt rules under the Utah Administrative Rulemaking Act necessary to fulfill the purposes of this title.

(3) In carrying out its responsibilities the board shall:

(a) use reasonable care to make the school and institutional trust property productive of income in the best interests of the school and institutional trusts;

(b) insure that state lands are administered under comprehensive land management policies using multiple use-sustained yield principles consistent with the respective school and institutional or public trust responsibilities;

(c) insure that at least fair market value is received for the use, sale, or exchange of school and institutional trust assets; and

(d) insure that the public trust assets are administered in the best interest of the state.

History: C. 1953, 65A-1-2, enacted by L. 1988, ch. 121, § 2; 1988 (2nd S.S.), ch. 1, § 1.

Amendment Notes. — The 1988 (2nd S.S.) amendment, effective July 5, 1988, added the present third and fourth sentences of Subsection (1).

Sunset Act. — Sections 63-55-263 and 63-55-265 provide that the Board of State Lands and Forestry is repealed July 1, 1999.

Utah Enabling Act. — See Volume 1A.
Administrative Rulemaking Act. — See Chapter 46a of Title 63.

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.

Retrospective Operation. — Laws 1988 (2nd S.S.), ch. 1, § 4 provides: "This act has retrospective operation to July 1, 1988."

COLLATERAL REFERENCES

Journal of Energy Law and Policy. — Utah's School Trust Lands: Dilemma in Land Use Management and the Possible Effect of

Utah's Trust Land Management Act, 9 J. Energy L. & Pol'y 195 (1989).

65A-1-3. Board of State Lands and Forestry — Membership — Appointment of successors — Chairman — Quorum.

(1) (a) The Board of State Lands and Forestry is composed of:

(i) ten members appointed by the governor with the advice and consent of the Senate; and

(ii) the state superintendent of public instruction or another person designated by him.

(b) Except as provided in Subsection (4), the board members appointed by the governor shall serve terms of four years.

(c) No more than six board members may be from the same political party.

(d) The board members shall be appointed consistent with Section 63-34-4.

(e) Board members shall be appointed to provide broad areas of experience and knowledge in resources of the state rather than to represent districts or special interests.

(2) The board shall consist of:

(a) the state superintendent of public instruction or another person designated by him;

(b) a person knowledgeable in forestry and fire control matters;

(c) one member appointed from each of the following districts:

(i) District 1 — Beaver, Garfield, Iron, Kane, and Washington Counties;

(ii) District 2 — Morgan, Rich, Summit, and Wasatch Counties;

(iii) District 3 — Juab, Millard, Piute, Sanpete, Sevier, and Wayne Counties;

(iv) District 4 — Carbon, Emery, Grand, and San Juan Counties; and

(v) District 5 — Daggett, Duchesne, and Uintah Counties;

(d) two members appointed from District 6 — Box Elder, Cache, Davis, and Weber Counties; and

(e) two members appointed from District 7 — Salt Lake, Tooele, and Utah Counties.

(3) (a) At least one member appointed under Subsection (2) shall be actively engaged in grazing livestock on state lands.

(b) At least one member appointed under Subsection (2) shall be knowledgeable in mining.

(c) At least one member appointed under Subsection (2) shall be a member of the petroleum industry.

(d) At least one member appointed under Subsection (2) shall be:

(i) well informed about, and interested in, the subject of wildlife conservation and restoration; and

(ii) an active member of a statewide conservation and wildlife organization.

(4) Of the members first appointed under Title 65A:

(a) five members shall be appointed for a term of two years; and

(b) five members shall be appointed for a term of four years.

(5) When a vacancy occurs on the board, the governor shall appoint a replacement, with the advice and consent of the Senate, to fill the unexpired term. The replacement must be from the same district as the member being replaced.

(6) The board shall select a chairman from the membership. Six members of the board constitute a quorum for the transaction of business.

(7) The director of the division shall act as the executive secretary of the board and shall keep a full record of board and division actions, including all documents submitted to the board or division.

History: C. 1953, 65A-1-3, enacted by L. 1988, ch. 121, § 2; 1988 (2nd S.S.), ch. 1, § 2; 1990, ch. 168, § 1.

Amendment Notes. — The 1988 (2nd S.S.) amendment, effective July 5, 1988, divided Subsection (1) into present Subsections (1)(a) to (1)(e); in Subsection (1)(a), substituted "ten" for "11" and added Subsection (1)(a)(ii); added "Except as provided in Subsection (4)" to the beginning and inserted "appointed by the governor" in Subsection (1)(b); added present Subsection (4), redesignating former Subsections (4) to (6) as present Subsections (5) to (7); sub-

stituted "Six" for "Five" at the beginning of the second sentence of present Subsection (6); and made minor stylistic changes.

The 1990 amendment, effective April 23, 1990, substituted "board and division actions" for "the board actions" and added "or division" in Subsection (7).

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.

Retrospective Operation. — Laws 1988 (2nd S.S.), ch. 1, § 4 provides: "This act has retrospective operation to July 1, 1988."

65A-1-4. Division of State Lands and Forestry — Creation — Power and authority.

(1) The Division of State Lands and Forestry is created within the Department of Natural Resources under the administration and general supervision of the executive director of the department and under the policy direction of the Board of State Lands and Forestry. The division shall be the executive authority for the management of the school and institutional trust lands, sovereign lands, and the state's mineral estates, and shall provide for forestry and fire control activities on state and private lands as required in Section 65A-8-1.

(2) The director of the Division of State Lands and Forestry is the executive and administrative head of the division and shall be a person experienced in administration and management of natural resources.

History: C. 1953, 65A-1-4, enacted by L. 1988, ch. 121, § 2.

Sunset Act. — Section 63-55-265 provides that the Division of State Lands and Forestry is repealed July 1, 1999.

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.

Cross-References. — Fire prevention, Chapter 27 of Title 63.

65A-1-5. Attorney general — Role in affairs of the board and division.

(1) The attorney general shall represent the board and the division in any legal action relating to state lands and upon request by the director may institute action to enforce the provisions of this title. Whenever an action is brought contesting a decision or act of the board or division, the board or division may be named a party in the case rather than the individuals that comprise the board or division.

(2) All leases, contracts, and agreements entered into by the division shall be approved as to form by the attorney general prior to execution.

(3) All suits for the collection of rental and damages shall be instituted by the attorney general, upon request by the director, in the name of the state. The attorney general, upon request by the director, shall prosecute actions for suppression costs or other damage caused by fires on state lands.

History: C. 1953, 65A-1-5, enacted by L. 1988, ch. 121, § 2.

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.

65A-1-6. Witnesses — Subpoena and oaths.

The board or director may issue subpoenas to compel the attendance of witnesses and the production of documents in adjudicative proceedings authorized by law. Any member of the board or the director may administer oaths in the performance of the board's official duties.

History: C. 1953, 65A-1-6, enacted by L. 1988, ch. 121, § 2; 1990, ch. 168, § 2.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, inserted "or director" after "board" and added "in adjudica-

tive proceedings authorized by law" at the end of the first sentence.

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.

65A-1-7. Appeals of agency action — Board to review and modify division action — Appointment of hearing examiner — Review to be governed by Administrative Procedures Act.

(1) The board shall make rules governing practice and procedure in adjudication of individual rights and responsibilities. These rules shall ensure procedural due process.

(2) Upon the petition of an aggrieved party to a final division action, the board may review the action on the record and issue an order modifying or rescinding division action inconsistent with statutes, rules, or board policy.

(3) Upon the motion of a board member, the board may initiate a review of division action to consider whether the action is consistent with statutes, rules, or board policy. The board may issue an order modifying or rescinding a division action it considers inconsistent with statutes, rules, or board policy.

(4) A qualified hearing examiner may be appointed for purposes of taking evidence and making recommendations for a board order. The board shall consider the recommendations of the examiner in making decisions.

(5) Board review of final agency action and judicial review of final board action shall be governed by Chapter 46b, Title 63, Administrative Procedures Act.

History: C. 1953, 65A-1-7, enacted by L. 1988, ch. 121, § 2; 1990, ch. 168, § 3; 1991, ch. 283, § 1.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, inserted "final" before "division action" and substituted "the action on the record" for "division actions" in Subsection (2); substituted "board order" for "declaratory order" at the end of the first sentence in Subsection (3); deleted former Subsection (4) which read "Any party to an agency order may seek review of the order"; and design-

nated former Subsection (5) as present Subsection (4) and substituted "board action" for "agency action" therein.

The 1991 amendment, effective April 29, 1991, added present Subsection (3); redesignated former Subsections (3) and (4) as present Subsections (4) and (5); and substituted "Board review" for "Reconsideration" at the beginning of Subsection (5).

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.

65A-1-8. Board members and division employees — Prohibited from acquiring an interest in state lands.

Board members, except as provided in Section 65A-1-3, or division employees may not directly or indirectly acquire any interest in state lands.

History: C. 1953, 65A-1-8, enacted by L. 1988, ch. 121, § 2.

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.

65A-1-9. Board members and division employees — Prohibited from interfering with an application to acquire an interest in state lands.

Any board member or division employee who, in furtherance of their own or another's interest, interferes in any manner with the application of a bona fide applicant to acquire an interest in state lands is guilty of a class A misdemeanor.

History: C. 1953, 65A-1-9, enacted by L. 1988, ch. 121, § 2; 1991, ch. 241, § 87.
Amendment Notes. — The 1991 amendment, effective April 29, 1991, substituted "class A" for "class B."

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.
Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

65A-1-10. Proprietary geologic or financial information — Kept confidential — Board to adopt rules.

The division may keep geologic and financial information, which the provider and the division agree is of a proprietary nature, confidential except when that information is required by federal or state law to be of a nonproprietary nature. The board shall adopt rules to determine when to accept confidential information.

History: C. 1953, 65A-1-10, enacted by L. 1988, ch. 121, § 2.

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.

65A-1-11. Division's authority to examine records and inspect premises.

(1) For the purpose of determining compliance with any rule or any performance or payment obligation under a lease, permit, or contract, the division may, at reasonable times, places, and intervals:

(a) require that the lessee, permittee, or contractor provide any pertinent books, records, or other documents of the lessee, permittee, or contractor; or

(b) inspect the property acquired, used, or developed under the lease, permit, or contract after reasonable notice or as provided in the lease, permit, or contract.

(2) Nothing in the section shall be construed to limit or invalidate audits conducted by the division prior to the effective date of this act.

History: C. 1953, 65A-1-11, enacted by L. 1990, ch. 325, § 1.

"Effective date of this act." — The phrase "effective date of this act" in Subsection (2) means April 23, 1990, the effective date of L. 1990, ch. 325.

Effective Dates. — Laws 1990, ch. 325 became effective on April 23, 1990, pursuant to Utah Const., Art. VI, Sec. 25.

65A-1-12. Filing date of applications and bids.

Any application or bid required for the lease, permitting, or sale of state lands in a competitive process shall be considered filed or made on the date received by the appropriate division office, whether transmitted by the United States mail or in any other manner.

History: C. 1953, 65A-1-12, enacted by L. 1991, ch. 283, § 2.

Effective Dates. — Laws 1991, ch. 283 be-

came effective on April 29, 1991 pursuant to Utah Const., Art. VI, Sec. 25.

CHAPTER 2 ADMINISTRATION AND MANAGEMENT OF STATE LANDS

Section 65A-2-1.	Administration of state lands — Multiple use-sustained yield principles to be used consistent with trust responsibilities.	Section 65A-2-3.	Endangered or threatened plant species — Division authorized to protect.
65A-2-2.	State land management plans — Required for natural and cultural resources — Other state agencies to be requested for assistance.	65A-2-4.	State land management plans — Board to adopt rules for notifying and consulting with interested parties.

65A-2-1. Administration of state lands — Multiple use-sustained yield principles to be used consistent with trust responsibilities.

All state lands are administered under comprehensive land management programs using multiple use-sustained yield principles, consistent with trust responsibilities. Stewardship management programs shall be considered in the development of comprehensive land management programs.

History: C. 1953, 65A-2-1, enacted by L. 1988, ch. 121, § 3.

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.

COLLATERAL REFERENCES

Journal of Energy Law and Policy. — Utah's School Trust Lands: Dilemma in Land Use Management and the Possible Effect of

Utah's Trust Land Management Act, 9 J. Energy L. & Pol'y 195 (1989).

65A-2-2. State land management plans — Required for natural and cultural resources — Other state agencies to be requested for assistance.

The division:

(1) shall develop management plans for natural and cultural resources on state lands; and

(2) may request other state agencies to generate technical data or other management support services for the development and implementation of state land management plans.

History: C. 1953, 65A-2-2, enacted by L. 1988, ch. 121, § 3; 1991, ch. 283, § 3.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, subdivided the section, substituted "state lands" for "lands" in

Subsection (1), and made changes in phraseology.

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.

65A-2-3. Endangered or threatened plant species — Division authorized to protect.

The division shall have the authority to make determinations concerning the management, protection, and conservation of plant species officially designated as endangered or threatened under the federal Endangered Species Act of 1973, as amended, on state lands.

History: C. 1953, 65A-2-3, enacted by L. 1988, ch. 121, § 3.

Federal Law. — The federal Endangered Species Act of 1973, referred to above, appears as 16 U.S.C. § 1531 et seq.

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.

65A-2-4. State land management plans — Board to adopt rules for notifying and consulting with interested parties.

The board shall adopt rules for notifying and consulting with interested parties including trust beneficiaries, the general public, resources users, and federal, state, and local agencies on state land management plans. Board rules shall provide:

- (1) for reasonable notice and comment periods; and
- (2) that the division respond to all commenting parties and give the rationale for the acceptance or nonacceptance of the comments.

History: C. 1953, 65A-2-4, enacted by L. 1988, ch. 121, § 3.

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.

CHAPTER 3 ILLEGAL ACTIVITIES ON STATE LANDS

Section		Section	
65A-3-1.	Trespassing on state lands — Penalties.		lands — County attorney to prosecute.
65A-3-2.	Prohibited acts on state lands.	65A-3-4.	Liability for causing wildland fires.
65A-3-3.	Enforcement of laws on state		

65A-3-1. Trespassing on state lands — Penalties.

(1) A person is guilty of a class B misdemeanor and liable for the civil damages prescribed in Subsection (2) if he:

- (a) without written authorization from the division:
 - (i) removes, extracts, uses, consumes, or destroys any mineral resource, gravel, sand, soil, vegetation, cultural resource, or improvement on state lands;
 - (ii) grazes livestock on state lands;
 - (iii) uses, occupies, or constructs improvements or structures on state lands;

(iv) uses or occupies state lands for more than 30 days after the cancellation or expiration of written authorization; or

(v) knowingly and willfully uses state lands for commercial gain; or

(b) uses or occupies state lands in violation of board rules.

(2) A person who commits any act described in Subsection (1) is liable for damages in the amount of:

(a) three times the value of the mineral or other resource removed, destroyed, or extracted;

(b) three times the amount of damage committed; or

(c) three times the consideration which would have been charged by the division for use of the land during the period of trespass.

(3) In addition to the damages described in Subsection (2), a person found guilty of a misdemeanor under Subsection (1) is subject to the penalties provided in Section 76-3-204.

(4) Money collected under this section shall be deposited in the fund in which like revenues from that land would be deposited.

History: C. 1953, 65A-3-1, enacted by L. 1988, ch. 121, § 4; 1990, ch. 168, § 4; 1991, ch. 283, § 4.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, substituted "if he" for "and liable for a civil trespass who" in the introductory paragraph in Subsection (1); inserted "uses, consumes," in Subsection (1)(a); deleted "except as provided by board rules" at the end of Subsection (1)(b); rewrote Subsection (1)(c) which read "constructs unauthorized improvements or structures"; substituted "written authorization" for "a lease or permit" at the end of Subsection (1)(d); added Subsection (1)(e); rewrote Subsection (2) to the extent that a detailed analysis is impracticable; and rewrote Subsection (4), which read "All money collected under this section will be deposited in the same fund that revenues from a lease or permit on the land would be deposited."

The 1991 amendment, effective April 29, 1991, inserted "and liable for the civil damages prescribed in Subsection (2)" near the beginning of Subsection (1); redesignated former Subsections (1)(a) to (1)(e) as present Subsections (1)(a)(i) to (1)(a)(v); added present Subsection (1)(b); substituted "who commits any act described in" for "found guilty under" near the beginning of Subsection (2); deleted the former second sentence in Subsection (3), which read "This section does not restrict the prosecution of a person committing any act punishable under any other criminal statute"; and made changes in style and phraseology.

Effective Dates. — Laws 1988, ch. 121, § 19 makes the act effective on July 1, 1988.

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

65A-3-2. Prohibited acts on state lands.

(1) A person is guilty of a class B misdemeanor who:

(a) throws or places any lighted cigarette, cigar, firecracker, ashes, or other flaming or glowing substance which may cause a fire on a highway or wildland;

(b) obstructs the state forester, or any of his deputies, in the performance of controlling a fire;

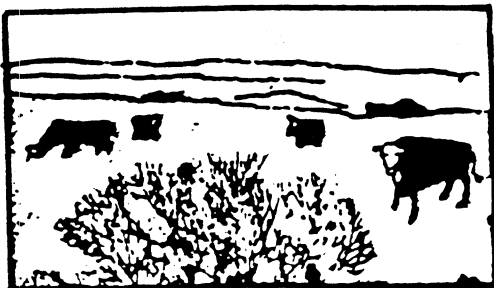
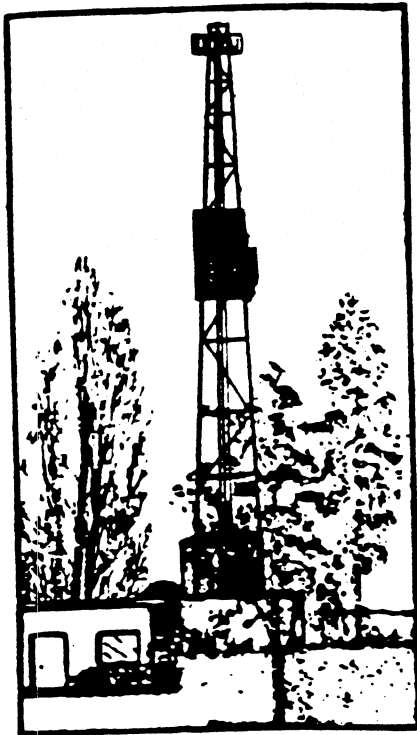
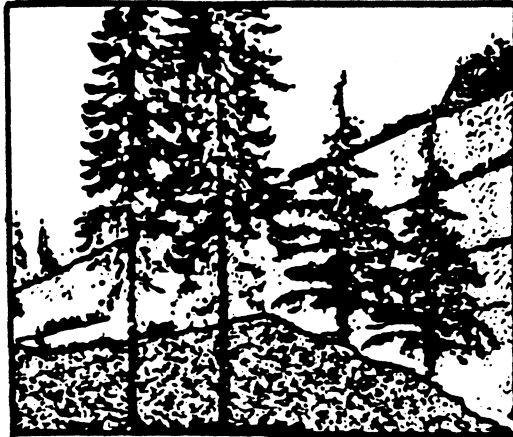
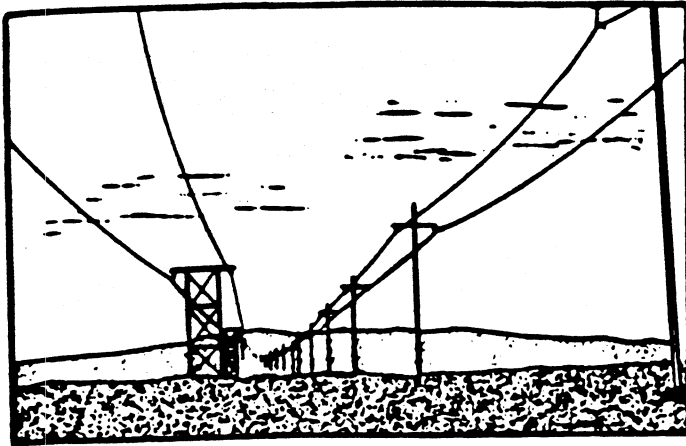
(c) refuses, on proper request of the state forester or any of his deputies, to assist in the controlling of a fire, without good and sufficient reason; or

(d) fires any tracer or incendiary ammunition anywhere except within the confines of established military reservations.

(2) Fines assessed under this section are deposited in the General Fund.

Rules Governing the Management and
Use of State Lands in Utah

AND USE OF STATE LANDS IN UTAH



23RD EDITION
SEPTEMBER 1990

STATE OF UTAH

RULES GOVERNING THE MANAGEMENT
AND USE OF
STATE LANDS IN UTAH

ADMINISTERED BY
THE DIVISION OF STATE LANDS AND FORESTRY

USE OF THIS MANUAL:

The division's rules are organized in two main categories: 1) Rules of General Application; and 2) Program Rules. Rules of General Application are rules that in general apply to most all of the division's activities. These rules include such areas as confidential information, public petitions for declaratory rulings, and administrative procedures. Program rules are the rules generally governing development activities on the sovereign lands, surface, and mineral estates administered by the division.

The effective date of each rule is printed next to the rule. If the rule has been amended, the effective date of the amendment is listed next to the original effective date.

If you need additional information on the management of state lands, please feel free to contact any of the following division offices:

MAIN OFFICE

Division of State Lands & Forestry
355 West North Temple
3 Triad Center, Suite 400
Salt Lake City, UT 84180-1204
801-538-5508

REGION AND AREA OFFICES

Northern Regional Office
and Wasatch Front Area Office
355 West North Temple
3 Triad Center, Suite 320
Salt Lake City, UT 84180-1203
801-538-5388

Uintah Basin Area Office
152 East 100 North
Vernal, UT 84078
801-781-0770

Bear River Area Office
55 East 100 North
Logan, UT 84321
801-752-8701

Southern Regional Office
and Central Area Office
130 North Main
P.O. Box 653
Richfield, UT 84701
801-896-6494

Southwestern Area Office
585 North Main
P.O. Box 761
P.O. Box 761
Cedar City, UT 84720
801-586-4408

Southeastern Area Office
89 East Center
Moab, UT 84532
801-259-6316

R632-1 Definition of Terms (5/1/87)

R632-1-1 Authorities (5/1/87)

This rule provides definitions which apply to all rules promulgated by the board and division unless otherwise provided. This rule is under the authority of Section 65A-1-2(2).

R632-1-2 Definitions (5/1/87)(10/4/88)(2/15/89)

Animal unit (AU): is equal to one cow and calf or their equivalent.

Board: Board of State Lands & Forestry

Board policy: a statement applying to classes of persons or agencies that broadly prescribes a future course of action, guidelines, principles, or procedures as defined in Section 63-46a-2(10).

Carrying capacity: the acreage required to adequately provide forage for an animal unit (AU) for a specified period without inducing range deterioration.

Cultural Resources: prehistoric and historic materials, features, artifacts.

Cultural Resource Survey: Class I: literature and site files search.

Class II: sample field surface survey or inspection.

Class III: intensive field surface survey.

Director: the director of the Division of State Lands & Forestry

Division: Division of State Lands & Forestry

In-kind use: occupancy or use by a beneficiary of its institutional trust land for authorized purposes as a direct economic benefit to the institution.

Multiple use: the management of various surface and sub-surface resources so that they are utilized in the combination that will best meet the present and future needs of the people of this state consistent with the school and institutional trust responsibilities.

Paleontological Resources (fossils): the remains or traces of organisms, plant or animal, that have been preserved by various means in the earth's crust.

Paleontological Resource Survey: an evaluation of the scientific literature or previous paleontological survey reports to assess the potential for discovery or impact to fossils by a proposed development, followed by a pedestrian examination of the exposed geological formations suspected of containing fossils of significance.

Paleontological Site: an exposure of a geologic formation having fossil evidence of scientific value as determined by professional consensus.

Person: any individual, partnership, association, company, corporation, municipality, county, state or federal agency, or other entity.

Preliminary Development Plan: the submittal, both of maps and written material, which shall identify and determine the extent and scope on a proposed unit development of the entire acreage under application. It shall illustrate, in phases, the development of the entire acreage and include a time table of the estimated schedule of development. The preliminary development plan shall identify density, open space, environmental reserves, site features, services and utilities, land ownerships, local master planning, zoning compliance and basic engineering feasibility.

Preliminary Development Plat: a plat which shall outline and specify the number of dwelling units, the type of dwelling units, the anticipated location of the transportation systems and description of water and sewage systems for the developed area on a Unit Development Lease.

Range condition: the relation between current and potential condition of the range site.

Rights-of-Entry: a right to a specific, non-depleting land use granted by the division to a qualified applicant that is temporary in nature, generally not to exceed in duration for more than one year, including but not limited to seismic and land surveys, research sites, access across state lands, and other temporary types of land uses.

Rights-of-Way: a right to a specific land use granted by the division to a qualified applicant including but not limited to transmission lines, canals and ditches, pipelines, tunnels, fences, roads and trails.

School and institutional trust lands: those properties granted by the United States in the Utah Enabling Act to the state of Utah in trust, or other properties transferred to the trust, to be managed for the benefit of the public school system and the various institutions of the state in whose behalf the lands were granted.

Significant site: any site which is designated by the Division of State History as scientifically worthy of specific management.

Site: archaeological and cultural sites are places of prehistoric and historic human activity including aboriginal mounds, forts, buildings, earth works, village locations, burial grounds, ruins, caves, petroglyphs, pictographs, or other locations which are the source of prehistoric cultural features and specimens.

Sovereign lands: those lands lying below the ordinary high water mark of navigable bodies of water at the date of statehood and owned by the state by virtue of its sovereignty or land received in exchange for sovereign lands.

Specimen: includes all man-made relics, artifacts, remains of a prehistorical, archaeological, or anthropological nature found on or below the surface of the earth, and any remains of prehistoric life.

R632-8 Adjudicative Proceedings

R632-8-1 Authorities (1/1/88)(3/31/89)

This rule designates adjudicative proceedings as informal and provides procedures for informal adjudicative proceedings under the authority of Sections 63-46b-1(5), 63-46b-4, 63-46b-5 (1987), and 65A-1-7(1). Leases, sales and exchanges are treated as contracts for purchase or sale of interests in real property. Therefore, management and administrative actions concerning specific leases, sales or exchanges are not governed by the procedural requirements of this rule pursuant to 63-46b-1(2)(g).

R632-8-2 Initial Designation of All Adjudicative Proceedings as Informal (1/1/88)

1. All requests for agency adjudications are initially designated as informal adjudications. Requests for action include applications for leases, permits, easements, sale of state lands, exchange of state lands, sale of forest products and any other disposition of resources under the authority of the agency or other matter where the law applicable to the agency permits parties to initiate adjudicative proceedings.
2. All adjudications commenced by the agency shall be initially designated as informal adjudications. Agency adjudications include actions relating to leases, permits, easements, sales contracts and other agreements and contracts under the authority of the agency.

R632-8-3 Procedures for Informal Adjudicative Proceedings (1/1/88)

1. Procedures for all categories of informal adjudicative proceedings shall comply with applicable provisions of Section 63-46b-5.
2. Procedures governing requests for agency action shall be as follows:
 - (a) requests for agency action shall include the information prescribed in Section 63-46b-3(2)(c);
 - (b) the division shall review requests for agency action for completeness and sufficiency of information. Parties submitting requests with insufficient information shall be allowed 30 days to cure the deficiencies, but may make a written request for additional time based on good cause shown;
 - (c) inadequate requests not remedied within the prescribed time shall be considered on the merits of the information provided;
 - (d) the division may prescribe one or more printed forms as provided by Section 63-46-b-3(2)(c) which may include standard leases, permits, easements, patents, certificates of sale, and the applications for such, or any other agreement, contract, conveyance or instrument.
3. Notice of agency action shall be provided to parties as provided in Section 63-46b-3(2).

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R632-80 Sale of State Lands (7/5/88)

R632-80-1 Authorities (7/5/88)

This rule prescribes the terms and conditions for the sale of state land and is under the authority of Sections 65A-1-2(2), 65A-7-1.

R632-80-2 Sale of State Lands (7/5/88)

The division may sell state lands at no less than the fair market value. Applicants meeting the requirements for determinable fee estate sales as described in Section 65A-7-4(6) shall be eligible for private sales.

R632-80-3 Application Requirements (7/5/88)(8/14/90)

1. A completed application form must be received with an application processing charge, which will be refunded in the event the parcel is withdrawn from sale by the division for planning purposes, and a deposit to cover applicable advertising and appraisal costs.
2. The deposit to cover advertising and appraisal cost shall be forfeited if the parcel is offered for sale but not sold.
3. Upon receipt of an application, the division shall review the application for completeness. Applicants submitting incomplete applications shall be allowed 60 days to provide the required data. Incomplete applications, not remedied within the 60 day period, may be denied, with the application fee forfeited to the state.

R632-80-4 Determination for the Sale of State Lands (7/5/88)(9/4/90)

The determination for the sale of state land shall be based upon the following procedure:

1. Preliminary Analysis

(a) The director may approve the sale of state lands where the requested lands have been appraised to establish fair market value; and

- i) designated for disposal in General Management Plans;
- ii) previously offered for sale but not purchased; or
- iii) otherwise classified by board action for disposal.

(b) The director may approve the sale of state lands subject to R632-80-4(2) and R632-80-4(3) when:

- i) parcels are zoned for residential, commercial, or industrial uses;
- ii) parcels meet criteria for sale under specific unit development leases; or
- iii) lands are not exempted under R632-80-4(1)(c).

(c) The director shall not further consider an application for sale when:

i) the sale results in an unmanageable and uneconomical parcel of state land, or eliminates access to a remnant holding, without appropriate remuneration;

ii) the land is within a state planning unit for which a General Management Plan is in progress; or

iii) the land is designated for retention in an approved General Management Plan.

iv) The application is for land exceeding one full section or when the application is for two or more non-contiguous parcels of land, unless said parcels are located in the same section and it can be shown that they are so similar in topography and use that separate applications would be unnecessary; provided that the director may permit consideration of an application for more than one full section or for two or more non-contiguous parcels if the director determines that the interests of the Trust would best be served by permitting such an application.

2. Market Analysis

(a) The division shall contract for a certified appraisal to be conducted for the purpose of determining current fair market value of the state land. The appraisal shall divide the parcel into units of similarly valued lands and shall establish a specific value for each unit. The cost of the appraisal shall be borne by the successful purchaser of the parcel. The value of the parcel, as determined by the appraisal, shall be held confidential by the division until the sale is consummated.

(b) The division shall conduct an economic analysis of the proposal, which shall include:

i) appraised fair market value;

ii) real estate trends;

iii) market demand;

iv) opportunity costs including potential for appreciation; and

v) associated management costs of retention.

3. Sale Determination

If the market analysis conducted pursuant to R632-80-4(2) above, indicates that the increase in income to the trust from leasing the parcel, or from retaining the parcel for appreciation purposes, reasonably exceeds the return to the trust beneficiaries to be expected from the sale of the parcel, the director shall deny the sale application. The application fee shall be forfeited to the state. Any monies deposited pursuant to R632-80-3(1) shall be returned to the applicant if sale is denied.

4. Appeal Process

Applicants desiring reconsideration of division action relative to sale determinations may petition for review pursuant to division rule.

R632-80-5 Public Sale Procedures (7/5/88)(6/1/89)(12/1/89)(5/17/90)(9/4/90)

1. If a sale is authorized pursuant to R632-30-5(2)(g), the applicant shall be required to submit an amount equal to 10% of the offer to purchase. This amount shall constitute the applicant's sealed bid for the purchase of the parcel and will not prevent the applicant from making oral bids at a subsequent auction.

2. All sales shall be advertised through publication in the Utah State Bulletin and posting at the local county (or city) courthouse or administration building, local post offices, and other appropriate locations and at least once each week for three consecutive weeks in one or more newspapers of general circulation in the county in which the land is located. Said advertisement shall indicate when and where the sale will be held. It shall contain the legal description of the parcel to be sold and a brief description of where the parcel is located. The advertisement shall also indicate the division office where parties interested in purchasing the land can obtain more information in the form of a public notice.

3. At least 30 days prior to the sale, the public notice referred to in paragraph 2 above shall be sent by certified mail to each person who owns property adjacent to the land proposed for sale and to each person who requests additional information in the form of the public notice. Said notice shall contain:

- (a) date, place and time of the sale;
- (b) legal description of the parcel to be sold;
- (c) any known geological hazards;
- (d) terms of the sale;
- (e) reservations of the sale;
- (f) division office where further information may be obtained;
- (g) authorization to sell; and
- (h) acceptability of lease proposals if applicable.

4. In addition to the requirements of R632-80-5(2), the division may advertise sales using commonly accepted methods to the extent which the director has determined may reasonably increase the potential for additional bidding at the sale. Applicant's deposit for advertising specified by R632-80-3(1) will not be used for such additional advertising.

5. All sales shall be initiated by sealed bid. The sealed bid may contain a certified check in an amount equal to 10 percent (10%) of the total amount offered to purchase the property. The division reserves the right to reject all bids. Those submitting the three highest bids, shall be allowed to enter into oral bidding, beginning at the point of the highest sealed bid. A bidder may be held to the value of the bidder's sealed bid.

6. If no bid submitted equals or exceeds the fair market value, then the sale will not be made.

7. At the consummation of the sale, the division shall collect at least ten percent (10%) of the total sale price, plus the advertising costs, and certificate and appraisal fees. Payments on the remaining balance shall thereafter be due annually on the 1st day of the month in which the sale occurred. Payments shall be structured so as to take full advantage of existing market conditions, and may allow balloon payments.

8. The interest rate which shall be charged against any unpaid balance shall be the prime rate, as published by Zion's First National Bank, plus two percent (Prime Rate + 2%) as ascertained on the date that the sale is approved.

9. Third parties owning authorized improvements on the parcel at the time of the sale shall be reimbursed pursuant to Section 65A-7-4(10).

10. Following the sale, the division shall issue a Certificate of Sale, in a timely manner, showing the land purchased, the amount paid, the amount due, and the time when the principal and interest will become due. Upon payment in full, the division shall issue a patent pursuant to Section 65A-7-4(12).

11. Sale of Lands Encumbered by Pre-January 1, 1988, Unit Development Leases

In processing applications for sale of land encumbered by leases with characteristics listed in paragraph "(1)" of this sub-section, the following provisions of R632-80 shall not be applicable:

- (a) R632-80-4(1)(c)(11);
- (b) R632-80-4(2)(a) - last sentence only; and
- (c) R632-80-4(3)

1) Lease characteristics invoking this sub-section include:

(A) the lease reflects the parties' intentions that the underlying fee estate could be sold to the lessee or sub-lessee non-competitively if the law so allowed;

(B) the lease was issued in accordance with procedures stated in the "Procedural Manual for Development Leases"; and

(C) the lease was issued prior to January 1, 1988.

ii) When an application for land governed by this sub-section is received, the lessee shall be notified and may at his own expense submit to the division a statement of development expenditures not reflected in the appraisal required by R632-80-4(2) and a statement of improvements to the leased property made or purchased by the lessee. The statement must be certified as true, accurate, and reasonable in accordance with generally accepted accounting principles by an independent Certified Public Accountant.

iii) Notice of sale for applications subject to this sub-section shall include a statement of the minimum bid for the sale, which shall be equal to the appraised value of the real property, less an amount equal to the replacement costs of improvements made or purchased by the lessee as identified in the lessee's certified statement submitted pursuant to paragraph "(ii)" of this sub-section. The notice of sale shall also state that the successful bidder must remit directly to the lessee a specified amount which shall equal the amount of the development expenditures stated in the certified statement plus the replacement costs of the lessee's improvements claimed in the certified statement.

iv) This sub-section shall not be applicable to lands which have been sub-leased except with the written consent of the sub-lessee.

R632-80-6 Certificates of Sale (7/5/88)(11/4/88)(8/14/90)

1. Certificates of sale may be assigned to persons qualified to purchase state lands, provided that all assignments are approved by the division, and that no assignment is effective until approval is given in writing.

2. An assignment must be of a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the certificate of sale number, the land involved, and the name and address of the assignee.

3. Assignment of a certificate of sale does not relieve the assignor from responsibility under the original contract.

4. Partial releases of property sold under certificates will be allowed at the discretion of the division. The following conditions must be met:

(a) Partial releases shall only be made for parcels 10 acres or larger;

(b) Access to the remainder of the land shall be unrestricted;

(c) When applicable, extension of utilities and other infrastructure is not prohibited because of lack of capacity in those improvements on the land to be released;

(d) Payment on the principal of at least 125% of the sale price of the parcel to be released has been received. If requested, the division shall credit a prorated amount of prepaid interest towards the payment on the principal. The proration shall be based upon a monthly ratio, with the

credit applying from the month following approval of the partial relinquishment;

(e) The buyer provides adequate legal descriptions of the parcels to be released; and

(f) Any prepaid principal received pursuant to this section shall be credited to principal payments due for the years immediately following the year in which the prepaid principal is received.

5. In the event of a default by the purchaser regarding any of the provisions of the certificate, the division may elect one of the following remedies:

(a) Forfeiture, pursuant to section 65A-7-4(13).

(b) Suit for Judgement. The division may bring a lawsuit to recover all past due amounts under the contract, plus administrative costs and collection fees, in order to bring the certificate current and up to date.

The division may elect to use this remedy as often as necessary in the event of multiple defaults.

(c) Foreclosure. When electing to foreclose on a certificate of sale, the division shall follow statutory procedures similar to foreclosure under a Trust Deed.

6. Certificates issued pursuant to this section shall contain provisions describing the remedies the division may elect in the event of default, and shall be signed by the director, and the purchaser.

7. Certificates of sale must be executed and received by the division within 30 days from the date of the purchaser's receipt of the certificate. If the certificate is not received by the division within the 30 day period, certified notice will be sent to the purchaser giving notice that after 30 days the sale will be cancelled with all monies received, including the down-payment, forfeited to the state. Notification by certified mail, return receipt requested, of this forfeiture provision shall accompany the transmittal of the certificate to the purchaser.

R632-80-7 Private Sale Procedures (7/5/88)

1. In order to determine that a private sale is in the best interest of the trust beneficiaries, advertising, to provide notice of this action, shall be required pursuant to 65A-7-4(5). The cost of this advertising shall be borne by the purchaser if the parcel is ultimately sold.

2. If a private sale is determined to be in the best interest of the trust beneficiaries, the applicant will be given notice of the minimum acceptable price for the parcel and allowed 60 days to remit the required payment.

3. Private sales shall be made pursuant to R632-80-5(7) and R632-80-5(8).

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3. The director shall review the petition form as soon as reasonably possible to assure completeness and, upon determination that the petition is complete, shall promptly forward the petition to all members of the Board of State Lands and Forestry.

4. Upon receipt of a petition, the director shall suspend division actions with respect to the matter for which consistency review is being sought by the petitioner. If an incomplete petition is not completed within ten working days of the mailing of a notice of incompleteness to the petitioner, the petition will be denied.

5. Subject to the requirements of R632-130-4(6), a completed petition shall be considered at the regularly scheduled board meeting next following the date of mailing the petition to the board.

6. The record and the completed petition shall be mailed to members of the board not less than ten days prior to the meeting of the board, except for good cause shown to and accepted by the board.

R632-130-5 Petition Review (2/15/89)

The board may, at its meeting:

1. decline to review the petition;
2. schedule consideration of the petition at a subsequent regular or special meeting to be held within 60 days;
3. conduct a review of the petition.
4. If the board reviews the petition and finds that the action of the division was not reasonably consistent with applicable statutes and rules, then the board may cause an Order to be drafted stating whether the division action shall be rescinded or modified; and, if the division action is to be modified, the board shall state the character of the modification in a manner consistent with statutes, rules, or board policy.

Order of the Board of State Lands
and Forestry, June 14, 1991

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BEFORE THE BOARD OF STATE LANDS AND FORESTRY
DEPARTMENT OF NATURAL RESOURCES, STATE OF UTAH

IN THE MATTER OF PETITION OF
SOUTHERN UTAH WILDERNESS
ALLIANCE, ET AL. FOR
CONSISTENCY REVIEW OF ROD
NO. 91-0319/EX198/PS6761/PS6762

ORDER OF THE BOARD ON
CONSISTENCY REVIEW HEARING

This matter came on for consideration by the Utah Board of
State Lands and Forestry Friday, June 14, 1991 in Moab, Utah.

The following Board Members were present and participated in
the hearing.

Roger Peart, Chair
Loryn Ross, Vice-Chair
Ruland Gill
Reed Christensen
Willard Gardner
Frank Nischiguchi
Russell Greathouse
Carol Lear
Walter Wright

The Utah Division of State Lands and Forestry ("Division") was
represented by David S. Christensen, Assistant Attorney General, and
Kevin Carter, Assistant Director of the Division.

The Petitioner was represented by Claudia F. Berry of Sutter, Axland, Armstrong & Hanson.

Mr. Ruland Gill was appointed by the Board as temporary chair and presiding officer in order to conduct the hearing.

The Board having heard argument and considered the memoranda of the parties, and being full advised in the premises, makes the following ORDER:

1. Based on the representations of the parties, notice and prehearing procedures were appropriate and correct.

2. The proceeding, pursuant to Board rule, is an informal adjudicative proceeding.

3. The decision of the Division Director to reject the applications for Exchange 198 and PS 6762, and offer for public sale the lands involved in PS 6761, subject to survey and completion of a mitigation plan prior to sale, as set forth in the Record of Decision upon which this decision is based, is found to be consistent with statutes, rules and Board policy, and mandated by the school trust under the Utah Constitution.


4. The cultural resource survey, and the imposition of the cultural resource mitigation plan prior to sale, satisfied the "taking into account" requirements of Utah Code Annotated Section 63-18-37(2)(a). Furthermore, the Resource Development Coordinating Committee review was a "taking into account" process prior to the final agency decision which was appealed to the Board for consistency review.

5. The Board therefore finds and concludes that the actions of the Division are consistent and that the petition be denied. It is therefore unnecessary to rule on the standing issue.

6. Pursuant to Utah Code Annotated Section 63-46b-13 any request for reconsideration must be filed within twenty (20) days of the date of this order.

7. Pursuant to Utah Code Annotated Section 63-46b-14(3), any petition for judicial review must be in the district court within thirty (30) days of the date of this order.

BY THE BOARD OF STATE LANDS AND FORESTRY, this 27th day of June, 1991.


RULAND J. GILL, Presiding Officer